

AGENDA

COMMITTEE ON BILLS ON SECOND READING

April 4, 2005

**Aldermen Lopez, Roy,
Sysyn, DeVries, O'Neil**

5:15 PM

**Aldermanic Chambers
City Hall (3rd Floor)**

1. Chairman Lopez calls the meeting to order.
2. The Clerk calls the roll.
3. Ordinances:
 - “Amending Sections 33.024, 33.025 & 33.026 (Ski/Aquatics Maintenance Worker) of the Code of Ordinances of the City of Manchester.”
 - “Amending Sections 33.024, 33.025 & 33.026 (Waste Water Treatment Plant Operator Trainee) of the Code of Ordinances of the City of Manchester.”

Ladies and Gentlemen, what is your pleasure?
4. Ordinance:
 - “Amending Chapter 52: Sewers of the Code of Ordinances of the City of Manchester by amending Section 52.160(A)(2), Sewer Rental Charges and Section 52.161 Septage Service Charge by increasing the user charges and septage service charges in the City of Manchester.”

Ladies and Gentlemen, what is your pleasure?
5. Ordinance:
 - “Amending Chapter 71: Snow Emergency Regulations, Sections 71.03 and 71.99 of the Code of Ordinances of the City of Manchester increasing the penalties for violation of snow emergency winter parking.”

Ladies and Gentlemen, what is your pleasure?

6. Ordinance to replace Chapter 39: Procurement Code.
(Note: communication from the Public Works Director dated 02/02/2005 submitting a minor revision on Page 15 of 19, in Section VII.A – SPECIALIZED PROCUREMENT ACTIONS.)
Ladies and Gentlemen, what is your pleasure?

TABLED ITEMS

A motion is in order to remove any of the following items from the table for discussion.

7. Ordinance:
“Amending the Code of Ordinances of the City of Manchester by creating a new section within Chapter 111: Amusements establishing regulations for noise activities conducted in outdoor concert venues throughout the city and inserting new penalties in Section 111.99: Penalty to enforce these regulations.”
(Tabled 11/06/2002)
8. Ordinance:
“Amending the code of Ordinances of the City of Manchester by repealing chapter 94: Noise Regulations in its entirety and inserting a new Chapter 94: Noise Regulations.”
(Tabled 08/17/2004 – revised draft ordinance submitted by Deputy City Solicitor Arnold enclosed herein.)
9. Shoreland Protection Act.
(Tabled 01/24/2005 pending presentation by the Director of Planning; Planning Director has indicated presentation can be made on 04/04/2005.)
10. If there is no further business, a motion is in order to adjourn.

To the Board of Mayor and Aldermen of the City of Manchester:

The Committee on Human Resources/Insurance respectfully advises, after due and careful consideration, that it has approved Ordinance:

“Amending Sections 33.024, 33.025 & 33.026 (Ski/Aquatics Maintenance Worker) of the Code of Ordinances of the City of Manchester.”

providing for a reclassification of a Recreation Maintenance Worker I (Grade 13) to a Ski/Aquatics Maintenance Worker (Grade 15), and is recommending same be referred to the Committee on Bills on Second Reading for technical review.

At a meeting of the Board of Mayor and Aldermen
held March 28, 2005 on a motion of Ald. O'Neil
duly seconded by Ald. DeVries the report
of the Committee was accepted and its recommendations
(adopted) ~~(denied)~~

Lu R. Bremer
City Clerk

Respectfully submitted,

Carol M. Johnson
Clerk of Committee
[Signature]

3

City of Manchester
New Hampshire

In the year Two Thousand and Five

AN ORDINANCE

"Amending Sections 33.024, 33.025, & 33.026 (Ski/Aquatics Maintenance Worker) of the Code of Ordinances of the City of Manchester."

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

SECTION 33.024 CLASSIFICATION OF POSITIONS be amended as follows:

Establish Ski/Aquatics Maintenance Worker, Class Code 6092 (see attached)

SECTION 33.025 COMPENSATION OF POSITIONS be amended as follows:

Establish Ski/Aquatics Maintenance Worker, Class Code 6092, Grade 15

SECTION 33.026 CLASS SPECIFICATIONS be amended as follows

Establish Ski/Aquatics Maintenance Worker, Class Code 6092, Grade 15, non-exempt

This Ordinance shall take effect upon its passage and all Ordinances or parts of Ordinances inconsistent therewith are hereby repealed.

DRAFT



3

City of Manchester, New Hampshire

Class Specification

This is a class specification and not an individualized job description. A class specification defines the general character and scope of responsibilities of all positions in a job classification, but it is not intended to describe and does not necessarily list every duty for a given position in a classification.

Class Title	Ski/Aquatics Maintenance Worker
Class Code Number	6092-15

General Statement of Duties

Assists in the operation and maintenance of ski and aquatics areas; performs directly related work as required.

Distinguishing Features of the Class

The principal function of an employee in this class is to assist the Ski/Aquatic Supervisor in operating and maintaining activities at ski and aquatic facilities. The work is performed under the supervision and direction of the Ski/Aquatics Supervisor or an assigned supervisor. Considerable leeway is granted for the exercise of independent judgement and initiative. This class is distinguished from other classifications in the Parks and Recreation/Cemetery Department by the broader scope of responsibility due to oversight of completion of projects assigned and supervision of seasonal/temporary workers (Ski Area Maintenance Worker, Cashier, Lift Attendants, Maintenance Worker, and Recreational Aide). The nature of the work performed requires that an employee in this class establish and maintain effective working relationships with other City employees and the public. The principal duties of this class are performed in an indoor/outdoor work environment with potential hazards.

Examples of Essential Work (illustrative only)

- Supervises a work crew, and participates in repair, maintenance and construction activities;
- Establishes job priorities and time frames for assigned personnel;

Ski/Aquatics Maintenance Worker

- Assigns tasks to seasonal/temporary workers
- Monitors completion of job assignments to ensure compliance with standards and instructions and revises instructions and time frames as necessary;
- Collects fees, balances account funds and deposits reconciled funds;
- Assists the Ski/Aquatics Supervisor in training employees on equipment, task procedures, work standards and proper safety procedures;
- Completes thorough and accurate reports on daily work activities, including tasks completed;
- Assists the Ski/Aquatic Supervisor in reviewing and analyzing methods, policies, procedures and performance to implement or recommend implementation of objective improvement systems;
- Determines when additional staff and resources are necessary to complete duties in a timely manner and coordinates needs with the Ski/Aquatic Supervisor and/or other supervisors;
- Completes reports on risk management activities, as needed;
- Operates and performs maintenance on equipment and machinery involved in ski area operation, aquatic system operation and other recreation operations;
- Initiates evacuation procedures in the event of a lift failure and serves as OIC through completion of evacuation;
- Provides technical advice to work crews in the maintenance of equipment and machinery related to ski/aquatics facilities;
- Provides needed information and demonstrations concerning how to perform certain work tasks to new employees in the same or similar class of positions;
- Keeps immediate supervisor and designated others fully and accurately informed concerning work progress, including present and potential work problems and suggestions for new or improved ways of addressing such problems;
- Attends meetings, conferences, workshops and training sessions and reviews publications and audio-visual materials to become and remain current on the principles, practices and new developments in assigned work areas;
- Responds to citizens' questions and comments in a courteous and timely manner;
- Communicates and coordinates regularly with appropriate others to maximize the effectiveness and efficiency of interdepartmental operations and activities;
- Performs other directly related duties consistent with the role and function of the classification.

Required Knowledge, Skills and Abilities
(at time of appointment)

- Thorough knowledge of current practices and procedures involved in ski operations, including maintenance and upkeep of all types of equipment and machinery;

Ski/Aquatics Maintenance Worker

- Thorough knowledge of current practices and procedures involved in aquatics system operation, including maintenance and upkeep of related equipment and machinery;
- Thorough knowledge of all safety procedures involved in ski area and aquatics operations;
- Substantial knowledge of accounts processing procedures;
- Substantial knowledge of the purposes and policies of the Parks and Recreation Department;
- Ability to coordinate Department objectives and community needs with Department resources and personnel capabilities;
- Ability to supervise, train, evaluate, and coordinate the work of others;
- Ability to use all power equipment, hand tools, vehicles, and tractors involved in construction and maintenance activities;
- Ability to communicate effectively with others both orally and in writing, using both technical and non-technical language;
- Ability to understand and follow oral and/or written policies, procedures and instructions;
- Ability to prepare and present accurate and reliable reports containing findings and recommendations;
- Ability to operate a personal computer using standard or customized software applications appropriate to assigned tasks;
- Ability to use logical and creative thought processes to develop solutions according to written specifications and/or oral instructions;
- Ability to perform a wide variety of duties with accuracy and speed under the pressure of time sensitive deadlines;
- Ability and willingness to learn quickly and put to use new skills and knowledge brought about by rapidly changing information and/or technology;
- Integrity, ingenuity and inventiveness in the performance of assigned tasks.

Acceptable Experience and Training

- Graduation from High School or possession of a GED; and
- Some experience in ski area and aquatics operations; or
- Any equivalent combination of experience and training which provides the knowledge, skills and abilities necessary to perform the work.

Required Special Qualifications

- On-call status;
- Valid CDL-B License (or w/in 6-months of employment);
- Ski Patrol Certification (or w/in 1 year of employment);
- Variable schedule dependent on seasonal needs.

Essential Physical Abilities

- Sufficient clarity of speech and hearing or other communication capabilities, with or without reasonable accommodation, which permits the employee understand department and safety rules and regulations and work in aquatics and outdoor ski environments;
- Sufficient vision or other powers of observation, with or without reasonable accommodation, which permits the employee to monitor assigned areas and inspect related equipment;
- Sufficient manual dexterity with or without reasonable accommodation, which permits the employee to operate hand and power tools continuously and to lift and carry, through a full range of motion, up to 100 pounds occasionally, 50 pounds frequently, and 20 pounds continuously;
- Sufficient personal mobility and physical reflexes, with or without reasonable accommodation, which permits the employee to work in the trenches, in rough terrain and access construction equipment and to be able to stoop, kneel, crouch, stand, walk, push, pull, climb and grasp repetitively.

Approved by: _____

Date: _____

To the Board of Mayor and Aldermen of the City of Manchester:

The Committee on Human Resources/Insurance respectfully advises, after due and careful consideration, that it has approved Ordinance:

"Amending Sections 33.024, 33.025 & 33.026 (Waste Water Treatment Plant Operator Trainee) of the Code of Ordinances of the City of Manchester."

providing for the establishment of a new class specification, WWTP Operator Trainee, and is recommending same be referred to the Committee on Bills on Second Reading for technical review.

At a meeting of the Board of Mayor and Aldermen
held March 28, 2005 on a motion of Ald. O'Neil
duly seconded by Ald. DeVries the report
of the Committee was accepted and its recommendations
(adopted) (denied)

Lu A. Skinner
City Clerk

Respectfully submitted,

Carol A. Johnson
Clerk of Committee

3

City of Manchester
New Hampshire

In the year Two Thousand and Five

AN ORDINANCE

"Amending Sections 33.024, 33.025, & 33.026 (WWTP Operator Trainee) of the Code of Ordinances of the City of Manchester."

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester,
as follows:

SECTION 33.024 CLASSIFICATION OF POSITIONS be amended as follows:

Establish WWTP Operator Trainee, Class Code 4001

SECTION 33.025 COMPENSATION OF POSITIONS be amended as follows:

Establish WWTP Operator Trainee, Class Code 4001, Grade 13

SECTION 33.026 CLASS SPECIFICATIONS be amended as follows

Establish WWTP Operator Trainee, Class Code 4001, Grade 13
non-exempt

This Ordinance shall take effect upon its passage and all Ordinances or parts of Ordinances inconsistent therewith are hereby repealed.



3

Proposed City of Manchester, New Hampshire Class Specification

This is a class specification and not an individualized job description. A class specification defines the general character and scope of responsibilities of all positions in a job classification, but it is not intended to describe and does not necessarily list every duty for a given position in a classification.

Class Title	WWTP Operator Trainee
Class Code Number	4001-13

General Statement of Duties

Operates equipment, systems and related facility features at the Wastewater Treatment Plant under close supervision; performs directly related work as required.

Distinguishing Features of the Class

The principal function of an employee in this class is to train to become a state certified wastewater treatment operator and to learn the operational requirements of the Manchester waste water treatment facility. The objective is that this classification will give individuals the opportunity to become a fully qualified treatment operator. The work is performed under the supervision and direction of WWTP Operators and the WWTP Superintendent but some leeway is granted for the exercise of independent judgement and initiative. This class is distinguished from all other operators by serving in a position under close supervision with a responsibility for on the job training as to the treatment processes. The nature of the work performed requires that an employee in this class establish and maintain effective working relationships with other city employees and the public. The principal duties of this class are performed in the Wastewater Treatment Plant facility. The operator trainee will be required to work as the fourth member of an operations crew during the course of the training and will be assigned to work on the night shift at the discretion of the Plant Superintendent.

Examples of Essential Work (illustrative only)

- Studies wastewater treatment processes and trains in all job functions associated with WWTP Operator functions including the sludge incinerator

3

- Mixes and adjusts chemical doses;
- Monitors computer generated information relating to wastewater issues and takes appropriate actions based upon that information.
- Observes variations in operating conditions and makes equipment and process related adjustments;
- Notifies supervisor of any actions taken or makes recommendations for changes;
- Monitors automated process control system operating levels;
- Inspects all equipment and processing areas;
- Collects samples and conducts tests of sewage, sludge and water;
- Performs calculations and records data according to established procedures;
- Interprets results and makes or recommends adjustments;
- Maintains a log of plant operations;
- Operates pumps and other equipment to control flow, sludge digestion and other processes;
- Develops safe and standard operation procedures for plant equipment activities;
- Performs routine cleaning and minor maintenance of equipment to include assembly, disassembly, and lubrication of equipment using standard mechanics hand tools;
- Operates safety equipment, including a self contained breathing apparatus, dust masks and face shield, monitoring equipment and instrumentation and related equipment;
- Provides needed information and demonstrations concerning how to perform certain work tasks to new employees in the same or similar class of positions;
- Keeps immediate supervisor and designated others fully and accurately informed concerning work progress, including present and potential work problems and suggestions for new or improved ways of addressing such problems;
- Attends meetings, conferences, workshops and training sessions and reviews publications and audio-visual materials to become and remain current on the principles, practices and new developments in assigned work areas;
- Responds to citizens' questions and comments in a courteous and timely manner;
- Communicates and coordinates regularly with appropriate others to maximize the effectiveness and efficiency of interdepartmental operations and activities;
- Performs other directly related duties consistent with the role and function of the classification.

Required Knowledge, Skills and Abilities (at time of appointment)

- Substantial knowledge of the principles and practices of waste water and sludge treatment processes and process control;
- Substantial knowledge of procedures of sampling and sample testing;
- Substantial knowledge of automated process control systems and related software;
- Substantial knowledge of operation and maintenance of plant equipment;
- Substantial knowledge of safety procedures in working in confined space and around hazardous materials and hazardous areas;
- Some knowledge of Federal Clean Water Act guidelines and other Federal, State and local regulations which affect plant operations;
- Ability to communicate effectively with others, both orally and in writing, using both technical and non-technical language;

- Ability to understand and follow oral and/or written policies, procedures and instructions;
- Ability to prepare and present accurate and reliable reports containing findings and recommendations;
- Ability to operate a personal computer using standard or customized software applications appropriate to assigned tasks;
- Ability to use logical and creative thought processes to develop solutions according to written specifications and/or oral instructions;
- Ability to perform a wide variety of duties and responsibilities with accuracy and speed under the pressure of time-sensitive deadlines;
- Ability and willingness to quickly learn and put to use new skills and knowledge brought about by rapidly changing information and/or technology;
- Integrity, ingenuity and inventiveness in the performance of assigned tasks.

Acceptable Experience and Training

- Graduation from High School or possession of a GED, and
- Some experience in related functions or
- Any equivalent combination of experience and training which provides the knowledge, skills and abilities necessary to perform the work.
- Preference will be given to candidates showing proficiency in math and science.

Required Special Qualifications

- Valid New Hampshire Driver's License.
- The employee will be required to obtain a State of New Hampshire Wastewater treatment operator certification within 18 months of employment, failure to obtain the certification within the required time frame will require that the employee be terminated or demoted to an alternative position.

Essential Physical Abilities

- Sufficient clarity of speech and hearing or other communication capabilities, with or without reasonable accommodation, which permits the employee to communicate effectively;
- Sufficient vision or other powers of observation, with or without reasonable accommodation, which permits the employee to perform assigned tasks;
- Sufficient manual dexterity with or without reasonable accommodation, which permits the employee to work in confined spaces and around hazardous materials;
- Sufficient personal mobility and physical reflexes, with or without reasonable accommodation, which permits the employee to perform assigned tasks in an outdoor environment.

3
WWTP Operator--4000

Approved by: _____ Date: _____

Revision Approved by: BMA Date: 4/20/04

To the Board of Mayor and Aldermen of the City of Manchester:

The Committee on Accounts, Enrollment and Revenue Administration
respectfully advising, after due and careful consideration, that they have approved
an Ordinance:

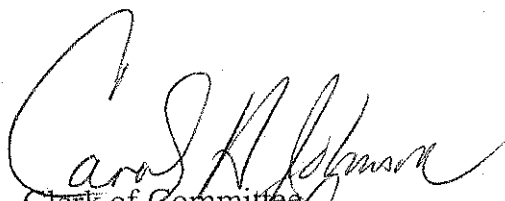

“Amending Chapter 52: Sewers of the Code of Ordinances of the City of
Manchester by amending Section 52.160 (A)(2), Sewer Rental Charges and
Section 52.161 Septage Service Charge by increasing the user charges and
septage service charges in the City of Manchester.”

and is recommending that same be referred to the Committee on Bills on Second
Reading for technical review.

At a meeting of the Board of Mayor and Aldermen
held Jan 25, 2005 on a motion of Ald. O'Neil
duly seconded by Ald. Garrity the report
of the Committee was accepted and its recommendations
(adopted) ~~(denied)~~


City Clerk

Respectfully submitted,


Clerk of Committee

Deputy

4

City of Manchester New Hampshire

In the year Two Thousand and Five

AN ORDINANCE

"Amending Chapter 52: Sewers of the Code of Ordinances of the City of Manchester by amending Section 52.160 (A)(2), Sewer Rental Charges and Section 52.161 Septage Service Charge by increasing the user charges and septage service charges in the City of Manchester."

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

I. Deletions to existing ordinance language are ~~struck through~~. New language appears in *italics*. Sections of the following chapter that remain unchanged appear in regular type.

§ 52.160 SEWER RENTAL CHARGES.

(A) The following sewer rental charges shall be in effect unless amended by further action of the Board of Mayor and Aldermen:

(1) Service charges are payable at the following rates per quarter:

- (a) Structures containing single- dwelling unit - \$11.
- (b) Structures, containing two dwelling units - \$9 per unit.
- (c) Multiple structures, per dwelling unit - \$7.
- (d) Commercial establishments, per establishment - \$15.
- (e) Industrial establishments, per establishment - \$31.

(2) User charges for industrial establishments shall be computed under the usage charge formula based on the unit costs provided herein. User charges for residential and commercial premises ~~computer under the usage charge fomula on said unit costs~~ are computed based on the number of cubic feet of water consumed on the premises as metered by the waterworks at the rates per 100 cubic feet and the effective billing dates as follows:

<u>RATE</u>	<u>EFFECTIVE BILLING DATE</u>
\$1.37/100 CF	1/01/94
\$1.55/100 CF	1/01/96
\$1.80/100 CF	7/1/05

(B) In the case of nonmetered premises, the average consumption for comparable structures as determined by the Chief Sanitary Engineer shall be used as a basis for billing. Such owners may have metering facilities installed at their own expense. Such installations must be requested in writing and conform to EPD policy for such installations.

City of Manchester New Hampshire

In the year Two Thousand and Five

AN ORDINANCE

"Amending Chapter 52: Sewers of the Code of Ordinances of the City of Manchester by amending Section 52.160 (A)(2), Sewer Rental Charges and Section 52.161 Septage Service Charge by increasing the user charges and septage service charges in the City of Manchester."

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

(C) Unit costs under the user charge formula are established at the rates and at the effecting billing dates as follows:

Vu	Bu	Su	Effective Date
\$1.29/1000 gallons	\$12.55/100 lbs.	\$12.32/100 lbs	1/01/94
\$1.46/1000 gallons	\$14.19/100 lbs.	\$13.93/100 lbs.	1/01/96
\$1.67/1000 gallons	\$17.57/100 lbs.	\$17.57/100 lbs.	7/01/05

(D) User charge credits for residential customers for extraneous water use are available by making application to the EPD for the installation of a "deduct" meter. Extraneous water use is that portion of the waterworks metered water, not returning to the sewer system.

(1) To participate, the residential user must install a deduct meter in accordance with conditions established by the Environmental Protection Division of the Highway Department. Such application shall be on forms provided by EPD. Usage charges for residential customers installing a deduct meter will be computed based on the number of cubic feet of water consumed on the premises as metered by the waterworks minus the number of cubic feet of water as measured by the deduct meter at the effective rates of division (C) of this section.

(2) Failure to comply with all conditions or any attempt to defraud the billing system as determined by EPD, will result in revocation of the right to use the deduct meter and in such case billing calculations will revert to the terms described in division (C). In such case, penalties will be sought in accordance with all applicable ordinances.

(3) User charge credits for non-residential customers are available by making application to the Highway Department, Environmental Protection Division (EPD) for a deduct meter as stipulated in (1) and (2) above and in accordance with conditions established by the Highway Department. Credits for non-residential users will be given for water used for irrigation purposes only. All other provisions of §52.160 will apply.

(4) User charge credits for elderly, residential accounts will be given to those sewer accounts that are granted an elderly exemption by the Tax Assessor's Office. Residents qualifying for the tax exemption will be billed at the rate of 50% of the current sewer usage charge and 50% of the current sewer service charge. This credit will not apply to condominium associations or homeowners associations. All other provisions of §52.160 will apply.

4

City of Manchester New Hampshire

In the year Two Thousand and Five

AN ORDINANCE

“Amending Chapter 52: Sewers of the Code of Ordinances of the City of Manchester by amending Section 52.160 (A)(2), Sewer Rental Charges and Section 52.161 Septage Service Charge by increasing the user charges and septage service charges in the City of Manchester.”

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

(E) User charge credits for residential accounts will be given to those sewer accounts that are granted a tax deferral by the Tax Assessor's Office for those on the Tax Deferral for Elderly and Disabled Persons Program. Residents qualifying for the tax deferral will be billed at the rate of 50% of the current sewer service charge. This credit will not apply to condominium associations or homeowners associations. The sewer usage and sewer service charges will revert back to standard rates outlined in §52.160 upon notification from the Tax Assessor's Office that the property has been removed from the Tax Assessor's Tax Deferral Program. All other provisions of §52.160 will apply.

§ 52.161 SEPTAGE SERVICE CHARGE.

There is hereby established the following service charge for the receipt of septage into the Manchester Wastewater Treatment Facility for the treatment of said septage prior to discharge thereof into the Merrimack River to be effective at the rates and billing dates as follows:

- (A) For any discharge of one thousand gallons or less - ~~\$70.00~~ \$80.00/1000 gallons.
- (B) For any discharge in excess thereof, a charge of ~~\$7.00~~ \$8.00 per multiple of 100 gallons or any part of such multiple ~~effecting effective beginning 1/1/93~~ 7/01/05.
- (C) For any discharge as measured by the weight scale at the septage receiving facility: ~~\$.07 per gallon (using conversion of 8.34 lb/gal), effective 1-1-93; or, \$.0085 per pound~~ \$.08/gallon (using conversion factor of 8.34 lb/gal) or \$.00959 per pound, effective 7/01/05.

II. This ordinance shall take effect July 1, 2005.

To the Board of Mayor and Aldermen of the City of Manchester:

The Committee on Traffic/Public Safety respectfully advises, after due and careful consideration, that it has approved Ordinance:

"Amending Chapter 71: Snow Emergency Regulations, Sections 71.03 and 71.99 of the Code of Ordinances of the City of Manchester increasing the penalties for violation of snow emergency winter parking."

and recommends same be referred to the Committee on Bills on Second Reading for technical review.

At a meeting of the Board of Mayor and Aldermen
held Feb 15, 2005 on a motion of Ald. O'Neil
duly seconded by Ald. Smith the report
of the Committee was accepted and its recommendations
(adopted) (~~denied~~)

L. A. Dwyer
City Clerk

Respectfully submitted,

Carol J. Johnson
Clerk of Committee
[Signature]

5

City of Manchester New Hampshire

In the year Two Thousand and Five

AN ORDINANCE

"Amending Chapter 71: Snow Emergency Regulations, Sections 71.03 and 71.99 of the Code of Ordinances of the City of Manchester increasing the penalties for violation of snow emergency winter parking."

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

I. Amend the Code of Ordinance by inserting new language in Section 71.03 Winter Parking and Section 71.99 Penalty as bolded (*italics*). Portions of the following section that remain unchanged appear in regular type.

71.03 WINTER PARKING.

It shall be unlawful for any person having custody or control of any vehicle to park or cause to be parked on any public street or highway hereinafter defined as a "snow emergency route" between the hours of 7:00 a.m. and 11:00 p.m., between the period of November 15 and May 15 in each succeeding year. *Violation of this section shall be as defined in Section 71.99 Penalty.*

71.99 PENALTY.

(A) Each such owner or operator of a vehicle who violates any provision of this chapter or Chapter 73, Parking Schedules, may, within seven days of the time when such notice was attached to such vehicle pay to the Parking Violations Bureau in person or by mail, for and in full satisfaction of such violation, the sum of \$25, *except that the fine for violation of Section 71.03 Winter Parking shall be \$75.*

(B) Failure to make such payment within seven days following a violation shall result in a minimum fine of \$50, *except for violation of Section 71.03 Winter Parking, which shall result in a minimum fine of \$150,* and may subject the owner or operator of the motor vehicle to an appearance in district court and a fine of not more than *\$1,000* upon conviction thereof.

II. This Ordinance shall take effect upon its passage.



**City of Manchester
Department of Highways**

227 Maple Street
Manchester, New Hampshire 03103-5596
(603) 624-6444 Fax # (603) 624-6487

Commission

Edward J. Beleski
- Chairman
Henry R. Bourgeois
William F. Kelley
Michael W. Lowry
William A. Varkas

Frank C. Thomas, P.E.
Public Works Director

Kevin A. Sheppard, P.E.
Deputy Public Works Director

Memo

To: Bills of Second Reading Committee
Alderman Michael Lopez, Chairman

From: Frank C. Thomas, P.E.
Public Works Director *ofc7*

Date: February 2, 2005

No.: #05-018

Subject: *Proposed Procurement Code
Minor Revision*

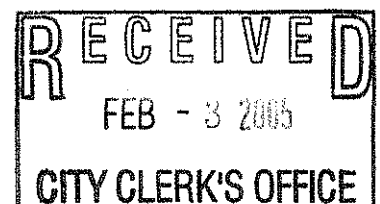
I am requesting that a minor revision be made to the Proposed Procurement Code on Page 15 of 19, in Section VII.A – SPECIALIZED PROCUREMENT ACTIONS. Attached is a revised Page 15 that notes the requested revision.

The revision is in the second sentence of paragraph VII.A “Exceptions may only be granted with a written waiver from the Board of Mayor and Aldermen *and the specified agency, department or officer*”. (Italic’s are requested to be deleted from the Proposed Procurement Code.)

Originally, the draft provided waivers to be granted by the BMA and/or the specified agency. On advice from the Solicitor’s Office, and/or was recommended to be eliminated so that there would only be one waiving authority. It was the intent to give this waiving authority to the Board of Mayor and Aldermen, not both the Board and the specified agency. Obviously, the Board can always seek advice on this matter from the specified agency, department or officer.

Feel free to contact this office, if you have any questions pertaining to this matter.

cc: Kevin Dillon
Tom Clark
Kevin Clougherty



6. Purchases that have been preceded by competitive sealed bidding, where no responsive bidder has responded.
7. Purchases under extensions of contracts when the same or lower price is extended for another year or part of a year. The maximum extensions shall not exceed five years without written notification to the Finance Officer.
8. Purchases under intergovernmental agreements or contracts that require use of procurement procedures inconsistent with the provisions of this section.
9. City share contracts that include contracts with developers for the construction of public improvements whereby the City shares in the cost of construction.
10. Used, discontinued or otherwise unique equipment or commodities that become available (such as at an auction) or are offered only for a limited time and may be acquired below the cost of similar new items.
11. Service on existing equipment when it is advantageous to the City to obtain parts, repair or service on existing equipment from a factory authorized dealer or distributor.
12. Perishable supplies that cannot be purchased by ordinary procurement methods because of imminent spoilage or decay.
13. Standardized parts, modules or accessories that will minimize excessive inventory or maintain compatibility with existing furnishings or installations.
14. Open ended purchase orders or written agreements with local suppliers in order to provide for emergencies, reduced down time of equipment or projects, and for supplies and materials not stored in a City warehouse.

VII. SPECIALIZED PROCUREMENT ACTIONS

- A. The procurement of the following goods and services shall be made exclusively by the delegated purchasing agency. Exceptions may only be granted with a written waiver from the Board of Mayor and Aldermen: ~~and the specified agency, department or officer:~~
1. Insurance and actuarial services by the Risk Manager and/or the Finance Officer.
 2. Legal services by the City Solicitor.
 3. Information technology services, hardware, software and network capable devices including telephones by the Information Services Director
 4. Accounting and banking services by the Finance Director.
 5. Auditing services by the Auditor.
 6. Other purchases from nondepartmental appropriations shall be made by the Finance Officer unless otherwise indicated in the budget.
- B. When purchasing insurance, a prequalification process may be used inviting agents and brokers to submit a questionnaire regarding their experience and qualifications. Only firms that, in the City's sole determination qualified, shall be selected for the bid process. Each firm selected to bid shall submit common specifications to their assigned insurance carriers. Awards for such purchases shall be made to the lowest responsible bidder. The City may retain the agency, and/or carrier receiving the contract for a period not to exceed three (3) years, reasonable premium increases notwithstanding, before any renewal of this bidding procedure.

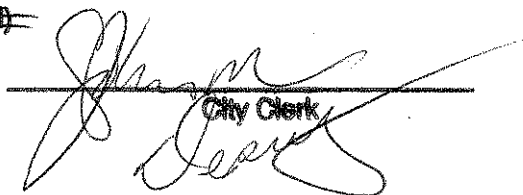
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To the Board of Mayor and Aldermen of the City of Manchester:

The Committee on Administration/Information Systems respectfully advises, after due and careful consideration, that it has approved the revised Procurement Code, attached herein, and is recommending same be referred to the Committee on Bills on Second Reading for technical review.


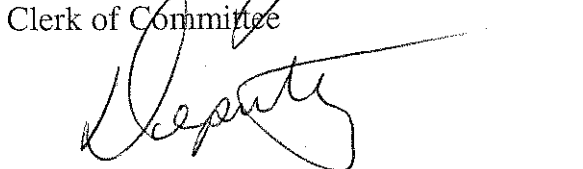
At a meeting of the Board of Mayor and Aldermen
held Jan 25, 2005 on a motion of Ald. O'Neil
duly seconded by Ald. Garritty the report
of the Committee was accepted and its recommendations

(adopted) ~~(denied)~~



City Clerk

Respectfully submitted,


Clerk of Committee

Deputy

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**CITY OF MANCHESTER
NEW HAMPSHIRE**

PROCUREMENT CODE



January 20, 2005

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**CITY OF MANCHESTER
NEW HAMPSHIRE**

PROCUREMENT CODE

I. GENERAL

A. Purpose

The Procurement Code shall promote fair and equitable treatment to all suppliers or prospective suppliers of goods and services, promote effective competition among prospective suppliers of goods and services, make as uniform as possible the procedures among various departments and agencies of the City by the standardization of the procurement process, to prevent abuses and favoritism, and promote the economical, effective, and efficient use of the City's total resources.

The purpose of the Procurement Code is to provide to the Purchasing Agency flexibility and defined guidelines for the purchasing of goods and services. These guidelines define maximum allowed procurement limits. The Purchasing Agency has the flexibility to reduce these limits in order to insure that the best interest of the City is being served. Any questions relating to this Procurement Code should be addressed in writing to the City Solicitor and/or the Finance Officer. The Purchasing Agency will at all times retain adequate records, based on the size of the procurement, as to the type of procurement utilized and the basis of award.

B. Applications of Provisions

This code applies to every expenditure of public dollars irrespective of their source, including federal assistance dollars, for the procurement of materials, supplies, services and construction. Nothing in this code shall prevent the City from complying with the terms and conditions of any grant, gift, bequest or cooperative agreements. Procurement actions involving Federal or State funding shall comply with their mandatory rules that may not be reflected in this procurement code.

The following procurement actions are not subject to this code.

- Intergovernmental Agreements.
- Agreements negotiated by the Risk Manager or City Solicitor for the settlement of litigation or threatened litigation.
- Contracts awarded for professional witnesses for the purpose of providing testimony relating to existing or probable judicial proceedings.
- Contracts awarded for real property transactions.
- Other specific procurement actions based on recommendation of the Chief Executive Officer and approval by the Board of Mayor and Aldermen.

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C. Definitions

1. **Amendment** is a mechanism by which parties can agree to modify, delete or add to the original scope of work, terms and conditions of a contract. Typically, amendments are used to modify contracts for professional services and/or to modify contracts for the furnishing of materials and services.
2. **Advantageous** means in the best interest of the City
3. **Auditor** means the City of Manchester's Auditor.
4. **Brand name** or **Equal Specification** means a specification using one or more manufacturers' names or catalog numbers to describe the standard of quality, performance and other characteristics to meet City requirements.
5. **Brand Name Specification** means a specification limited to one or more items by a manufacturer's name or catalog numbers.
6. **Change Order** means a written order signed by an authorized agent of the City and by the contractor authorizing an addition, deletion, or a revision in work or an adjustment in the contract price or contract time, issued on or after the effective date of the contract, as provided for in the original contract. Typically, change orders are used to modify construction contracts.
7. **Chief Executive Officer** means the Mayor of the City of Manchester.
8. **City** means the City of Manchester, NH.
9. **Construction** means the process of building, altering, repairing, improving or demolishing any public structure or building, or other public improvements of any kind to public real property or any public infrastructure.
10. **Construction Management** means a project delivery method that provides a comprehensive array of management and/or consulting services spanning all phases of the design and construction process from conception to completion of the construction project.
11. **Contract** means all types of City agreements, regardless of what they may be called for the procurement of materials, supplies, services and Purchase Orders shall be used as the contract for procurement of materials and supplies. Formal written agreements shall be used for the procurement of services, construction and complex actions.
12. **Contractor** means any person or firm who has a contract with the City.
13. **Debarment** means an action taken by the City, under the provisions of this code, to prohibit a person from participating in City procurements.

- 6
14. **Design-Bid-Build** means a project delivery method in which the purchasing agency sequentially awards separate contracts, the first for Architectural and Engineering Services to design the project and the second for construction of the project according to the design.
 15. **Design-Build** means a project delivery method in which the purchasing agency enters into a single contract for design and construction of an infrastructure facility.
 16. **Design-Build-Finance-Operate-Maintain** means a project delivery method in which the purchasing agency enters into a single contract for design, construction, finance, maintenance, and operation of an infrastructure facility over a contractually defined period. No City funds are appropriated to pay for any part of the services provided by the contractor during the contract period. This delivery method does not preclude the City from providing financing as long as the City ultimately is reimbursed all its costs over the life of the contract agreement.
 17. **Design-Build-Operate-Maintain** means a project delivery method in which the purchasing agency enters into a single contract for design, construction, maintenance, and operation of an infrastructure facility over a contractually defined period. All or a portion of the funds required to pay for the services provided by the contractor during the contract period are either appropriated by the City prior to award of the contract or secured by the City through *fees* or user charges.
 18. **Employee** means an individual drawing a salary or wages from the City whether elected or not. Any noncompensated individual performing personal services for the City or any department agency, commission, council, board, or any other entity established by the executive or legislative branch of the City. Noncompensated individuals, serving as elected City officials or serving on a City Department Board, are also considered employees.
 19. **Finance Officer** is the Finance Director of the City of Manchester
 20. **Gratuity** means a payment, loan, subscription, advance, deposit of money, service, or gift, presented or promised.
 21. **Invitation for Bids** means all documents, whether attached or incorporated by reference, which are used for soliciting bids according to the City's procurement policies and procedures.
 22. **May.** The word "may" shall be construed as being permissive.
 23. **Multi-Step Sealed Bidding** means a two phase competitive process. The first phase consists of a technical phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the City. The second phase consists of a firm and final bid from those bidders whose technical offers were deemed acceptable by the City.

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24. **Procurement** means buying, purchasing, renting, leasing or otherwise acquiring any materials, supplies, professional services and construction services. It also includes the description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration.
 25. **Professional Services** means those services requiring special knowledge, education or skill and where the qualifications of persons rendering the services and the experience of the firm are of primary importance. Professional services shall include, but not be limited to, appraisers, attorneys, architects, engineers, surveyors, accountants, psychologists, physicians and other health care providers.
 26. **Purchasing Agency** is the City department making the proposed procurement.
 27. **Purchasing Agency Director or Director** is the department head in charge of the City department making the proposed procurement acting either directly or through authorized representatives.
 28. **Request for Proposals** means all documents, whether attached or incorporated by reference, which are used for soliciting proposals according to the City's procurement policies and procedures.
 29. **Responsible Bidder** means a person or firm who submits a bid or proposal that conforms in all material respects to the invitation for bid or request for proposals and who has the financial capabilities and expertise to perform the contract requirements and the integrity and reliability that will assure good faith performance.
 30. **Service** means the furnishing of labor, time or effort by a contractor that does not involve the delivery of a specific end product other than required reports and performance. Service does not include employment agreements or collective bargaining agreements.
 31. **Shall.** The word "shall" is construed as being mandatory.
 32. **Solicitation** means an invitation for bids, a request for technical offers, proposals, quotations or any other invitation or request by which the City invites a person to participate in a procurement action.
 33. **Specification** means any description of the physical or functional characteristics of materials, supplies, services or construction requirements. It may also include a description of any requirement for inspecting, testing, preparing materials, supplies services or construction projects for delivery.

D. Department Purchasing Responsibility

Department Heads and City officers shall be responsible for making purchases from funds appropriated to their respective departments. The Highway Department shall be responsible

for coordinating and overseeing the purchases of motor vehicles by City departments. See Section VII., Specialized Procurement Actions for procurements exclusively delegated to a purchasing agency.

E. General Procurement and Award Provisions

1. ***Prohibition Against Subdivision.*** No procurement action shall be subdivided to avoid the requirements of this procurement code.
2. ***Bulk Purchases.*** Whenever feasible, procurements shall be done in bulk to take full advantage of discounts. Purchasing agencies shall be responsible for anticipating their needs in a timely fashion in order to consolidate and expedite procurement of the same type of items. A lead purchasing agency shall be identified for procurement of commodities or services that are most common to their department. The lead purchasing agency shall accomplish the bulk citywide procurement action based on requirements identified by other departments. Capital Outlay requirements shall be planned and scheduled for periodic bulk procurement actions based on approved budget quantities.
3. ***Awards.*** Contracts for the procurement of supplies, materials and construction shall be awarded to the lowest responsible bidder unless otherwise provided for in the bidding documents or in the Procurement Code. The basis of award shall always be defined in the bidding documents. Among other factors that may be considered in determining lowest responsible bidders are the following:
 - (a) ***Capability.*** The ability and skill of the bidder to perform the contract.
 - (b) ***Timeliness.*** Whether the bidder can perform the contract or furnish the supplies promptly, in accordance with plans and specifications, or within the time specified, without delay or interference.
 - (c) ***Previous Performance.*** The character, integrity, reputation, judgment, experience and efficiency of the bidder.
 - (d) ***Quality.*** The quality of supplies or performance on previous purchases or contracts, including known quality based on previous use, and the quality, availability and adaptability of the suppliers or contractual services to the particular use.
 - (e) ***Legal Compliance.*** Previous and existing compliance by the bidder with laws and ordinances relating to the contract.
 - (f) ***Conditions.*** The number and scope of conditions attached to the bid by the bidder.
4. ***Award to Other Than Low Dollar Bidder.*** Award to other than the low bidder is not allowed unless the bidder is not responsible or unless the award formula specifically allowed for other items to be taken into account to decide who is the lowest responsible bidder. When it appears appropriate not to make an award to the lowest dollar bidder, the purchasing agency Director shall prepare a written statement of the reasons for the project files.

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5. **Multi-Term Contracts.** Purchase orders or written agreements or contracts may be awarded for a maximum of five years in one year increments. Multi-term contracts shall contain provisions for cancellation by the City in the event funds are not appropriated for the continuance of the contract. Any yearly increases in unit prices/rates shall be tied to an established CPI with a maximum yearly cap.

Multi-year Contracts without a "cancellation by the City" provision or contract committing future unappropriated funds or a contract without a set maximum yearly adjustment must be approved by the Board of Mayor and Aldermen. Multi year contracts that have been totally funded do not have to conform to Section I, E, 5.

The Airport Director or his designee is authorized by the Board of Mayor and Aldermen to enter into multi-year agreements which do not conform to this Section I, E, 5 when, in the opinion of the Airport Director, situations arise that require immediate commitment or approval of agreements.

6. **Late Bids or Proposals.** A bid, proposal, modification or withdrawal is late if it is received at the location designated in the Invitation for Bids or Request for Proposals, after the time and date set in the solicitation documents. Late bids or proposals shall be rejected.
7. **Mistakes In Bids.** A bidder may correct mistakes discovered before the time and date set for the opening of bids based on procedures in the solicitation documents. After a bid is opened, mistakes based on an error in judgment shall not be corrected or withdrawn, unless it is obvious to the City that an egregious error was made. Minor or administrative mistakes may be waived by the purchasing agency director.
8. **Cancellation of Solicitations.** An invitation for bids, a request for proposals, or other formal solicitations may be cancelled or rejected in whole or in part if deemed advantageous to the City.
9. **Specifications.** All specifications shall be written to promote overall economy for the purposes intended and encourage competition in satisfying the City's needs and shall not be unduly restrictive. General performance specifications may be used in a Request for Proposals and Multi-step procurements when it is not desirable or feasible to prepare detailed specifications.
10. **Cost or Pricing Data.** The submission of current cost or pricing data may be required in situations where analysis of the proposed price is essential to determine that the price is reasonable and fair. A contractor shall, when requested, submit current cost or pricing data and shall certify that the cost or pricing data submitted is accurate, complete and current as of a mutually determined specified date.
11. **Change Orders.** Change orders to contracts may be executed according to change order clauses provided for in the original contract provided the change order does not materially change the scope of the original procurement.

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12. ***Pre-Bid or Pre-Proposal Conferences.*** A pre-bid or pre-proposal conference may be conducted within a reasonable time before bid opening or receipt of proposals. Pre-bid or pre-proposal conferences may be mandatory. If mandatory, only those bidders attending the mandatory pre-bid conference, shall be allowed to participate in the bid or proposal. Any changes to the solicitation documents shall be provided to all eligible bidders.
 13. ***Prequalification.*** The purchasing agency may require prequalification of prospective bidders for the procurement of supplies, materials, services and construction if the procurement is less than \$250,000. If the procurement is over \$250,000 the purchasing agency shall conform to Section IV of this procurement code. Bidders have a continuing duty to provide the purchasing agency director with information on any material changes affecting the basis of prequalification.
 14. ***Bid or Performance Bonds.*** The purchasing agency may require the use of bid or performance bonds or other securities for the procurement of supplies, materials, services or for construction, in order to guarantee satisfactory completion of the procurement. However, any procurements over \$150,000 shall require a bid and performance bond or other security satisfactory to the Purchasing Agency after consulting with the Finance Officer and the City Solicitor. Bonds required by statute will not be waived. Any such bonding or security requirements shall be set forth in the solicitation. Failure of the bidder to comply with the security requirements in the solicitation may result in the rejection of the bid or proposal.
 15. ***Right to Inspect.*** The City may, at reasonable times, inspect the place of business of a contractor or any subcontractor that is related to the performance of any contract awarded or to be awarded by the City.
 16. ***Right to Audit.*** The City may, at reasonable times and places, audit the books and records of any contractor who submits cost or pricing data required by solicitations. If the City determines that there may be a need to audit a procurement, the contract agreement shall define these rights and who will assume the cost of the audit.
 17. ***City Procurement Records.*** All determinations and other written records pertaining to the solicitation, award or performance of a contract shall be maintained for the City in a contract file by the purchasing agency. All procurement records shall be retained and disposed of by the City according to the records retention guidelines, Internal Revenue requirements and schedules of the City.

II. AUTHORITY TO AWARD AND AVAILABILITY OF FUNDS

A. Authority to Award

All procurement actions made based on approved department budgets and authorized CIP allocations shall be awarded by the purchasing agency having delegated authority provided by this Procurement Code. Procurement actions not authorized to a department

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or multi-year contracts without a "cancellation by the City" provision requiring future City appropriations, shall be approved by the Board of Mayor and Aldermen.

B. Availability of Funds

Unencumbered funds to cover the entire purchase order or contract must be available in the appropriate budget of the purchasing agency prior to award of any purchase order or contract. Purchase orders and contracts are subject to the annual appropriation of funds. Multi-term purchase orders or contracts shall have adequate unencumbered funds available for the first year except as noted.

III. SOURCE SELECTION

A. Small Purchases

Small purchases are considered informal procurement actions. Procurement requirements shall not be artificially divided so as to constitute a small purchase.

1. Total price is \$10,000 or less, it shall be made after adequate inquiry based on the director or his designee's knowledge of a reasonable price and satisfactory quality.
2. Total price more than \$10,000 to \$25,000. When the total price is greater than \$10,000, and not more than \$25,000 purchases shall be made using documented oral or written price or rate quotations from an adequate number of suppliers. If available, a minimum of three quotations from qualified suppliers shall be obtained. Such price and rate quotations, the date of such quotations and the names of suppliers shall be documented.

B. Competitive Sealed Bidding

1. Competitive sealed bidding is considered a formal procurement action. Except as provided in this Procurement Code, all purchases in excess of \$25,000 shall be made by competitive sealed bidding. Purchase orders and contracts shall be awarded to the lowest responsible bidder except as provided for in this code.
2. Competitive sealed bidding procedures shall at a minimum, incorporate the following:
 - (a) Formal bid specifications that at a minimum include the general terms and conditions of the proposed purchase, requirements of the bidder, form of contract, the forms for submission of bids and the basis of award
 - (b) Product or service specifications that accurately describe the product or service required in such a manner as to not preclude competition. If specific manufacturer's names or models are used to describe the product or service, a minimum of two manufacturers' names should be used if available. There shall

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be a provision for approval of an equal product or service. Also, see Section VI part A.5.

- (c) Adequate public notice of a minimum of (5) business days, prior to the date established for the opening of bids. Such notice shall include as a minimum, publication in a newspaper of general distribution.
- (d) Sealed bids shall be opened publicly at the time and place designated in the Invitation for Bids. A tabulation of all bids received shall be available for public inspection within a reasonable period of time. Departments shall determine an adequate amount of time.
- (e) The purchasing agency may negotiate with the two low bidders in order to reduce the bid to fall within available funds and/or to obtain a lower bid amount, provided that the original intent of the procurement is not materially changed. The right to negotiate a lower total bid must be a condition of the bidding documents.
- (f) The award of bids shall be formalized through the execution of a purchase order or written contractual agreement.
- (g) The purchasing agency may reject any or all bids or parts thereof when such rejection has been determined to be in the City's best interest.

C. Multi-Step Sealed Bidding

1. When it is considered impractical to readily prepare a detailed specification to support an award based on price, a two-step bid process may be used. The first step is a request for proposals, based on a general or performance specification, requesting the submission of unpriced technical proposals. The second step is an invitation for firm and final priced bids to those bidders whose proposals have been determined to be technically acceptable under the criteria set forth in the first step.
2. The multi-step sealed bidding method may be used if the purchasing agency determines that:
 - (a) Available specifications or purchase descriptions are not sufficiently complete to permit full competition without technical evaluations and discussions to ensure mutual understanding between each bidder and the City.
 - (b) Definite criteria exist for evaluation of technical offers.
 - (c) More than one technically qualified source is expected to be available.
 - (d) A fixed price contract will be used.
3. The Invitation to Bid must provide notice that a multi-step process is being used. The notice should explain the multi-step process and that only those bidders providing technically acceptable proposals, will be allowed to participate in submitting a firm and final bid price.

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4. Adequate public notice of a minimum of 10 working days prior to the date established for the opening of bids shall be provided. Such notice shall include as a minimum publication in a newspaper of general circulation.
5. Award shall be made to the lowest dollar responsible bidder.

D. Competitive Sealed Proposals

1. When competitive sealed bidding is not practical or advantageous to the City, the purchasing agency director, may authorize the use of competitive sealed proposals and negotiations as the procurement method.
2. In determining whether competitive sealed bidding is practical or advantageous to the City, the purchasing agency director, shall consider the following factors:
 - (a) Whether the cost to develop formal technical bid specifications sufficient to insure open competitive bids, would make the total cost of the procurement excessive.
 - (b) Whether the proposed purchase is to be accompanied by land, development, or other related economic transactions, therefore the bid price may not accurately reflect the total economic effect of the purchase.
 - (c) Whether the product or service is specialized or custom produced, and the development of terms, conditions, specifications, and other provisions specifically defining the procurement requires interaction with prospective suppliers.
 - (d) Where no responsible bidder has submitted a bid in response to the invitation.
3. If the purchasing agency director determines that competitive sealed bidding is not practical and that competitive sealed proposals and negotiations should be used, the purchasing agency shall:
 - (a) Develop terms, conditions and general or performance specifications for the product or service required.
 - (b) In such cases where the award is not necessarily to be based on the lowest negotiated price, the request for proposals shall indicate and define the relative importance of price and other significant evaluation factors.
 - (c) Provide adequate public notice as in the case of competitive sealed bids.
 - (d) Sealed proposals shall be received at the time and place designated in request for proposals. A proposal received after the closing date and time set for the receipt of proposals, is late and shall not be considered. No proposals shall be handled so as to permit disclosure of the contents of any proposal to competing offerers

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during the process of negotiation. Submission of the proposal shall be conditioned on not disclosing the proposals content until the completion of negotiations and award of a contract. Proposals shall be opened in the presence of witnesses. Proposals and modifications shall be shown only to City personnel having a legitimate interest in them or persons assisting in the City evaluation.

4. After the opening and evaluation of competitive sealed proposals, written or verbal negotiations may be conducted with one or more parties who have submitted proposals. Such negotiations are designed to achieve terms and conditions most favorable to the City. Negotiations need not be conducted where time constraints preclude additional negotiations or where the purchasing agency certifies that acceptance of an initial offer without discussion, would result in fair and equitable prices. The request for proposals shall clearly define the City's rights pertaining to negotiations.
5. Award shall be made to the proposer whose proposal has been determined to be responsive and most advantageous to the City. The contract file shall contain, in writing, the basis on which award is made.

IV. PREQUALIFICATION OF BIDDERS

- A. Prequalification of potential bidders shall be accomplished for all contracts for construction, reconstruction, alteration and repair or refurbishing of real property with an estimated project cost in excess of \$250,000. Prequalification of contractors based on the type of work and dollar limits may be done annually. The invitations for bids shall be issued only to firms that have, in the City's sole determination, been prequalified.
- B. The purchasing agency involved shall establish rules and regulations that govern prequalification of bidders. The rules and regulations shall take into consideration:
 1. The ability, capacity, and skill of the bidder to perform the contract or provide the service required.
 2. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference.
 3. The character, integrity, reputation, judgment, experience and efficiency of the bidder.
 4. The quality of performance on previous contracts.
 5. The previous and existing compliance by the bidder with laws and ordinances relating to the contract.
 6. The sufficiency of financial resources and ability of the bidder to perform the contract.
 7. The quality, availability, and adaptability of the supplies or contractual services to the particular use required.
 8. The ability of the bidder to provide future maintenance and service.
 9. The number and scope of bidder conditions attached to the bid.
 10. The amount of total direct and indirect costs that would be incurred by the City because of the bid.

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11. The ability of the bidder to meet the City's bonding and insurance requirements.

- C. These rules and regulations may also include other special considerations as authorized by law.

V. PROFESSIONAL SERVICES

The procurement of accounting, architectural, auditing, engineering, financial, legal, data processing, medical services and independent consultant services for personnel, insurance and actuarial planning and management, human resource and public relations, may be accomplished using the following procedures:

- A. *Professional Services \$25,000 or Less* – The purchasing agency may solicit one or more proposals for the procurement of professional services at a fee which is deemed fair and reasonable. The purchasing agency will document the basis of the procurement in the project file. In no case shall more than three awards be made to the same vendor in any 12 months without the prior written notification to the Finance Officer.
- B. *Professional Services greater than \$25,000* – A formal Request for Proposal process shall be used. The purchasing agency shall develop a Request for Proposals to include terms, conditions, scope of service, desired results, end product and consultant qualification. Selection criteria and the method of determining a final fee by the City will be included in the Request for Proposals. This process can be accomplished in a Request for Qualification Phase and a Request for Proposals Phase. The Request for Proposal process shall include the following:
1. Adequate public notice of a minimum of ten business days prior to the date established for the receipt of qualifications and/or proposals shall be provided. Such notice shall include as a minimum, publication in a newspaper of general circulation.
 2. A minimum of three proposals, if available, shall be evaluated and selection made based on demonstrated competence, qualifications and project approach for the services required. Where applicable to a particular project, factors such as the following shall be used in tentatively selecting a firm:
 - (a) Specific experience with similar projects.
 - (b) Specific experience with earlier phases of the same project.
 - (c) Background and experience of staff members who would be assigned to the job.
 - (d) Availability.
 - (e) Locality of firm.
 - (f) Ability to communicate ideas.
 - (g) Ability to supply all of the major disciplines necessary to perform the work.
 - (h) Qualifications of subcontractors/subconsultants.
 - (i) Conceptual design/project approach.
 - (j) Accuracy of the firm in estimating time and cost requirements.
 - (k) Responsiveness to requirements contained in the RFP.
 - (l) Financial capabilities of the firm.

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3. The purchasing agency may interview one or more of the proposers in order to clearly understand the proposers qualifications and the submitted proposal.
 4. Selection criteria may be established in order to determine the best overall proposal. The criteria may incorporate a weighting system for the proposals received.
 5. Fees for professional services are an important consideration, which must not be taken lightly. However, selection shall be ultimately based on demonstrated competence, qualifications and project approach at a reasonable fee. Depending on the complexity of the project, the purchasing agency may utilize one of the following procedures to determine a fee:
 - (a) The fee can be requested as part of the requested proposal and considered in tentatively selecting a firm.
 - (b) A multi-step sealed procurement can be requested where the sealed fee is not opened until a proposer has been tentatively selected.
 - (c) A fee can be negotiated after a proposer has been selected and a final scope of services has been determined.
 6. If necessary, the purchasing agency may negotiate with one or more responsive firms in order to make a tentative selection. Once a tentative selection has been made, a final scope of services and fee shall be negotiated with the selected firm in order to enter into a contract deemed to be in the best interest of the City.
 7. On award, all contracts for professional services shall be formalized in a written agreement signed by the applicant and the purchasing agency.

VI. NEGOTIATED PROCUREMENT ACTIONS

- A. Purchase orders or written agreements shall be awarded without benefit of formal or informal bidding in one or more of the following cases. Negotiation methods may be used to award the contracts.
 1. Purchases required in the event of an emergency that necessitates the immediate purchase of goods or services.
 2. Purchases where the cost of the service is fixed by law.
 3. Purchases that can be procured through cooperative intergovernmental purchase agreements with other government jurisdictions.
 4. Sole source procurements, where the proposed purchase is manufactured by only one company.
 5. Purchases from a sole manufacturer, where it is determined to be more efficient and economical to reduce costs of maintenance of additional repair parts, suppliers or services.

6. Purchases that have been preceded by competitive sealed bidding, where no responsive bidder has responded.
7. Purchases under extensions of contracts when the same or lower price is extended for another year or part of a year. The maximum extensions shall not exceed five years without written notification to the Finance Officer.
8. Purchases under intergovernmental agreements or contracts that require use of procurement procedures inconsistent with the provisions of this section.
9. City share contracts that include contracts with developers for the construction of public improvements whereby the City shares in the cost of construction.
10. Used, discontinued or otherwise unique equipment or commodities that become available (such as at an auction) or are offered only for a limited time and may be acquired below the cost of similar new items.
11. Service on existing equipment when it is advantageous to the City to obtain parts, repair or service on existing equipment from a factory authorized dealer or distributor.
12. Perishable supplies that cannot be purchased by ordinary procurement methods because of imminent spoilage or decay.
13. Standardized parts, modules or accessories that will minimize excessive inventory or maintain compatibility with existing furnishings or installations.
14. Open ended purchase orders or written agreements with local suppliers in order to provide for emergencies, reduced down time of equipment or projects, and for supplies and materials not stored in a City warehouse.

VII. SPECIALIZED PROCUREMENT ACTIONS

- A. The procurement of the following goods and services shall be made exclusively by the delegated purchasing agency. Exceptions may only be granted with a written waiver from the Board of Mayor and Aldermen and the specified agency, department or officer:
1. Insurance and actuarial services by the Risk Manager and/or the Finance Officer.
 2. Legal services by the City Solicitor.
 3. Information technology services, hardware, software and network capable devices including telephones by the Information Services Director
 4. Accounting and banking services by the Finance Director.
 5. Auditing services by the Auditor.
 6. Other purchases from nondepartmental appropriations shall be made by the Finance Officer unless otherwise indicated in the budget.
- B. When purchasing insurance, a prequalification process may be used inviting agents and brokers to submit a questionnaire regarding their experience and qualifications. Only firms that, in the City's sole determination qualified, shall be selected for the bid process. Each firm selected to bid shall submit common specifications to their assigned insurance carriers. Awards for such purchases shall be made to the lowest responsible bidder. The City may retain the agency, and/or carrier receiving the contract for a period not to exceed three (3) years, reasonable premium increases notwithstanding, before any renewal of this bidding procedure.

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C. In any award, the City may take into consideration any costs of conversion involved.

VIII. COOPERATIVE PROCUREMENT

The purchasing agency shall have authority to join with any other municipal, state or federal governmental agency in cooperative procurement actions.

IX. SPECIAL PROCUREMENT METHODS

The Purchasing Agency proposing to utilize this section of the Procurement Code must detail in the project file why utilizing this section of the Code is in the best interest of the City.

A. Definitions:

1. ***Design Requirements*** means the written description of the infrastructure facility or service to be procured, including: (1) required features, functions, characteristics, qualities, and properties that are required; (2) the anticipated schedule, including start, duration, and completion; (3) estimated budgets (as applicable to the specific procurement) for design, construction, operation and maintenance. The Design Requirements may, but need not, include drawings and other documents illustrating the scale and relationship of the features, functions and characteristics of the project.
2. ***Independent Peer Reviewer Services*** are additional Architectural and Engineering Services provided to review design build proposals. The function of this review is to provide an independent professional peer review to confirm that the key elements of the professional engineering and architectural designs provided by the contractors are in conformance with the applicable standard of care.
3. ***Infrastructure Facility*** means a building; structure; or networks of building, structures, pipes, controls, and equipment that provide transportation, utilities, public education, or public safety services.
4. ***Proposal Development Documents*** means drawings and other design related documents that are sufficient to fix and describe the size and character of an infrastructure facility as to architectural, structural, mechanical and electrical systems, materials, and such other elements as may be appropriate to the applicable project delivery method.

B. Procurement Methods

1. ***Design-Build*** is a project delivery method in which the procuring agency enters into a single contract for design and construction of an infrastructure facility. Procurement of Design-Build services shall generally follow procedures outlined in the "Design Build Manual of Practice", as published by the "Design Build Institute of America".

- 6
2. ***Operation and Maintenance*** is a project delivery method whereby the procuring agency enters into a single contract for the routine operation, routine repair, and routine maintenance of an infrastructure facility. Operation and Maintenance services shall be procured from prequalified contractors by utilizing competitive sealed proposals submitted in response to a Request for Proposals, which has established the supplies and services required to maintain and operate infrastructure facilities.
 3. ***Design-Build-Operate-Maintain*** is a project delivery method in which the procuring agency enters into a single contract for design, construction, maintenance, and operation of an infrastructure facility over a contractually defined period. All or a portion of the funds required to pay for the services provided are either appropriated by the City prior to award of the contract or secured by the City through fee or user charges. Procurement of Design-Build-Operate-Maintain services shall generally follow procedures outlined in the "Design Build Manual of Practice", as published by the "Design Build Institute of America".
 4. ***Design-Build-Finance-Operate*** is a project delivery method in which the procuring agency enters into a single contract for design, construction, finance, maintenance, and operation of an infrastructure facility over a contractually defined period. No funds are appropriated to pay for any part of the services provided by the contractor during the contract period. Procurement of Design-Build Finance Operate Maintain services shall generally follow procedures outlined in the "Design Build Manual of Practice", as published by the "Design Build Institute of America". A preliminary determination by the City should have been made that project revenues are sufficient, over the length of the proposed contract, to cover design, construction, finance, and operations.
 5. ***Construction Management Services*** is a project delivery process by which a qualified third party provides construction leadership with a defined scope throughout various phases of the project (e.g. planning, design and construction). The Construction Manager would typically provide advice and the construction leadership, contract management, direction, supervision, coordination and control of the work during the construction phase. The Construction Manager would strive to integrate the expertise of the design professional with the contractors knowledge of project constructability in order to obtain a cost effective end result. The Construction Manager could hold the dual role of design professional and contractor. The procurement of Construction Management Services shall generally follow procedures outlined by the Association of General Contractors "Owners Guidelines for Selection of a Construction Manager"
 6. ***Other Special Project Delivery Methods*** or combinations of the above may be utilized provided that the purchasing agency can demonstrate that the delivery method meets the intent of this procurement code and receives the approval of the the Board of Mayor and Aldermen.

C. Evaluation Factors

The Request for Proposals shall state all evaluation factors and subfactors that will be separately rated and the weights to be given to each factor and subfactor in the evaluation.

6

Evaluation factors may consist of the following:

1. Demonstrated compliance with design requirements,
2. Qualifications and experience,
3. Financial capacity,
4. Project schedule,
5. Price (or life-cycle price for Design-Build-Operate-Maintain and Design-Build-Finance-Operate-Maintain procurements), and
6. Other evaluation factors if any.

D. The Request for Proposals may require each offerer to identify an Independent Design Peer Reviewer whose competence and qualifications to provide such services shall be an additional evaluation factor in the award of the contract. The City reserves the right to choose its' own Independent Design Peer Reviewer.

X. PROHIBITIONS

A. Conflict of Interest

No employee, officer or agent of the City shall participate in the award or administration of a contract in which they or any member of their immediate family has an interest. No employee, officer or agent shall participate in the award or administration of a contract with any person, firm, partnership or corporation in which they or any member of their immediate family is an officer or employee or is about to become an officer or employee.

B. Pecuniary Benefit

No employee, officer or agent of the City who is participating or is about to participate in the award or administration of a contract, shall either solicit or accept any kickback, gratuity, contingent payment or other pecuniary benefit from any firm, person, partnership or corporation involved in such contract. For the purpose of this section, PECUNIARY BENEFIT means any advantage in the form of money, property, commercial interest, travel, offer of employment or anything else, the primary significance of which is economic gain.

C. Standards of Conduct

Every employee, officer or agent of the City is expressly prohibited from knowingly participating in the following:

1. Underestimating or exaggerating requirements to certain prospective bidders for the purpose of influencing bids.
2. Misrepresenting competitor's prices, quality or service to obtain concessions.

D. Savings Provision

Nothing in this subchapter is intended to invalidate or in anyway limit the term of any

b

contract or special service agreement lawfully made prior to the effective date of this subchapter.

6

REVISED PROCUREMENT CODE – NOVEMBER 2004

EXECUTIVE SUMMARY

The entire Procurement Code has been rewritten with the intent of providing more clarification and to permit more procurement options such as design-build, construction management, etc.

The following are some of the major changes incorporated into this Draft Procurement Code:

- A. Small purchases of \$10,000 or less made after adequate inquiry. *Presently \$1,000.* Purchases from \$10,000 to \$25,000 shall be made using documented oral or written price or rate quotations from an adequate number of suppliers. *Presently \$1,000 to \$10,000.*
- B. Except as provided in this Procurement Code, all purchases in excess of \$25,000 shall be made by competitive sealed bidding. *Presently in excess of \$10,000.*
- C. The purchasing agency may negotiate with the two low bidders to reduce the bid. *Presently can only negotiate with the low bidder.*
- D. Multi-step sealed bidding may now be used. The first step is a request for proposals based on general or performance specifications. The second step is to obtain final bid prices based on technically acceptable proposals. *Presently not permitted.*
- E. Competitive sealed proposals and negotiations as a procurement method is permitted. *Presently requires Board of Mayor and Aldermen approval.*
- F. All bidders for construction type projects in excess of \$250,000 must be prequalified. *Presently all bidders for projects in excess of \$100,000.*
- G. Professional services shall be procured based on demonstrated competence, qualifications and project approach for the required service. *Presently fees are required at the time proposals are submitted. Quality based selection is similar to the way the State procures professional services.*

6

H. Fees for professional services can be obtained utilizing one of the following three procedures:

1. A fee can be requested as part of the request for proposals.
2. A multi-step sealed procurement can be requested where the sealed fee is not opened until a proposer has been tentatively selected.
3. A fee can be negotiated after a proposer has been selected and a final scope of services has been negotiated.

Presently fees are required at the time proposals are submitted.

I. Professional services of \$25,000 or less can be procured by soliciting one or more proposals at a fee deemed fair and reasonable by the purchasing agency. *Presently \$10,000 or less.*

J. Professional services in excess of \$25,000 must be procured through a formal Request for Qualifications/Request for Proposals process. *Presently in excess of \$10,000.*

K. The following procurement methods will now be permitted:

1. Design-Build
2. Operation and Maintenance
3. Design-Build-Operate-Maintain
4. Design-Build-Finance-Operate
5. Construction Management

Presently not permitted.

L. Procurements through other special project delivery methods or other combinations of K above will be permitted with the approval of the Board of Mayor and Aldermen. *Not presently permitted without the passage of an ordinance.*

Remained on
11/6/02 - Table pending /
info from Intam.
1/14/03 - Remained on
table
6/2/03 - "
10/14/03 - "
11/20/04 - "
8/17/04 - "

To the Board of Mayor and Aldermen of the City of Manchester:

01-24-05 Retabled

Gentlemen:

The Committee on Administration/Information Systems respectfully advises, after due and careful consideration, that it has approved Ordinances:

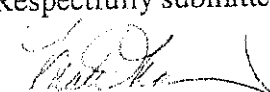
"Amending the Code of Ordinances of the City of Manchester by creating a new section within Chapter 111: Amusements establishing regulations for noise activities conducted in outdoor concert venues throughout the city and inserting new penalties in Section 111.99: Penalty to enforce these regulations."

as enclosed herein; and recommends that same be referred to the Committee on

Accounts, Enrollment & Revenue Administration and the Committee on Bills on Second

Reading for technical review.

Respectfully submitted,


Clerk of Committee

At a meeting of the Board of Mayor and Aldermen

held July 16 2002 on a motion of Ald. Gatsas

duly seconded by Ald. O'Neil the report

of the Committee was accepted and its recommendation is

(adopted) ~~(denied)~~



City Clerk

7

City of Manchester New Hampshire

In the year Two Thousand and Two

AN ORDINANCE

"Amending the Code of Ordinances of the City of Manchester by creating a new section within Chapter 111: Amusements establishing regulations for noise activities conducted in outdoor concert venues throughout the city and inserting new penalties in Section 111.99: Penalty to enforce these regulations."

Page 1 of 7

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

- I. Amend the Code of Ordinances by deleting §§ 111.65 through 111.70: Dances; Dance Halls; Assembly in its entirety and inserting new §§ 111.65 through 111.73: Dances; Dance Halls; Assembly. New language to the sections appear in bold (**bold**). Previous language from the sections that remain unchanged appear in regular type.

DANCES; DANCE HALLS; ASSEMBLY

§ 111.65 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

A-WEIGHTED SOUND PRESSURE. The sound pressure level as measured with a sound level meter using the A-weighting network. The standard notation is dB(A) or dBA.

DANCE HALL. Any location, other than a food-service establishment as defined by § 117.01 of this title, which permits or permits to occur, dancing. This definition shall not include a public or private school licensed by the state or the city for the purpose of conducting regular dancing classes or dance courses of study as its regular and recurrent business activity.

DECIBEL. A logarithmic unit of measure often used to measure magnitudes of sound. The symbol is dB.

ENTERTAINMENT PLACE OF ASSEMBLY. A room or space in which provision is made for the occupancy or assembly of 100 or more persons for entertainment purposes. For the purpose of this definition such room or space shall include any occupied connecting rooms, space, or area on the same level or in the same story, or in a story or storied above or below, where entrance is common to the rooms, space, or areas. An entertainment place of assembly shall be classified in either two classifications, Class I or Class II. A Class I entertainment place of assembly shall apply to non-profit organizations that do not receive exemptions pursuant to § 110.08(C) of this Code. Class II entertainment places of assembly shall include all other applicants.

7

City of Manchester New Hampshire

In the year Two Thousand and Two

AN ORDINANCE

"Amending the Code of Ordinances of the City of Manchester by creating a new section within Chapter 111: Amusements establishing regulations for noise activities conducted in outdoor concert venues throughout the city and inserting new penalties in Section 111.99: Penalty to enforce these regulations."

Page 2 of 7

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

NOISE. Any sound that exceeds the standards set forth in this chapter, annoys or disturbs a reasonable person of normal sensibilities, or causes or tends to cause any adverse psychological or physiological effect on humans.

SOUND. An oscillation in pressure, stress, particle displacement and particle velocity which induces auditory sensation.

SOUND LEVEL METER. An apparatus for the measurement of sound levels. The sound level meter shall be of a design and have the characteristics of a Type 2 or better instrument as established by the American National Standards Institute.

§ 111.66 LICENSE REQUIRED.

(A) No person shall own or operate a dance hall or entertainment place of assembly within the city unless a license shall first be obtained from the City Clerk.

(B) No person shall conduct or allow to be conducted any entertainment or public dancing which is an isolated or occasional event, and which is not part of the regular and recurrent business activity of the owner or operator of the room or space within the city unless a license shall first be obtained from the City Clerk.

(C) (1) Notwithstanding any other licensing ordinance, a duly licensed Class I and Class II restaurant in the city may allow dancing and entertainment upon obtaining an annual restaurant dance and entertainment license from the city.

(2) The application for a restaurant dance and entertainment license shall be made to the City Clerk upon forms to be determined by the City Clerk, the licensee shall be liable for any applicable police officer's fee and the license shall expire annually on April 30.

Penalty, see § 111.99

Cross-reference:

Business license fees, see § 110.20

7

City of Manchester New Hampshire

In the year Two Thousand and Two

AN ORDINANCE

"Amending the Code of Ordinances of the City of Manchester by creating a new section within Chapter 111: Amusements establishing regulations for noise activities conducted in outdoor concert venues throughout the city and inserting new penalties in Section 111.99: Penalty to enforce these regulations."

Page 3 of 7

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

§ 111.67 POLICE ATTENDANCE AT FUNCTION.

When it is determined after investigation by the Chief of Police to be necessary to preserve order, protect the health, safety, and welfare of the citizens of the city, or to help avoid traffic-related problems, public disturbance, or public nuisance, all establishments required to be licensed under this subchapter shall be required to hire an off-duty police officer or officers during those hours the Chief of Police deems appropriate. The Chief of Police may suspend the requirement after investigation as he deems appropriate, but his requirement may be reinstated following receipt of complaints and investigation by the Chief of Police.

§ 111.68 MINORS TO BE ACCOMPANIED BY PARENT OR GUARDIAN.

Minors under the age of 17 years shall not be admitted to a dance hall unless accompanied by parent or guardian or under the supervision of school authorities. Penalty, see § 111.99

§ 111.69 RESTRICTED AREAS AT DANCES.

No person attending a public dance shall enter any room designated for the use of the opposite sex. Penalty, see § 111.99

§ 111.70 CURFEW AT DANCES.

(A) No public dancing shall be permitted between the hours of 2:00 a.m. and 2:00 p.m. on Sunday, 1:00 a.m. and 12:00 p.m. on Monday, or 2:00 a.m. and 12:00 p.m. Tuesday, Wednesday, Thursday, Friday, and Saturday.

(B) No exhibit of natural or artificial curiosities, theatrical performances, or other shows shall be permitted between the hours of 2:00 a.m. and 9:00 a.m. on Sunday, 1:00 a.m. and 9:00 a.m. on Monday, or 2:00 a.m. and 9:00 a.m. Tuesday, Wednesday, Thursday, Friday, and Saturday. Penalty, see § 111.99

City of Manchester New Hampshire

In the year Two Thousand and Two

AN ORDINANCE

"Amending the Code of Ordinances of the City of Manchester by creating a new section within Chapter 111: Amusements establishing regulations for noise activities conducted in outdoor concert venues throughout the city and inserting new penalties in Section 111.99: Penalty to enforce these regulations."

Page 4 of 7

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

§ 111.71 NOISE ACTIVITIES; PURPOSE.

The purpose of this section is to establish standards that will eliminate and reduce unnecessary noise at outdoor venues throughout the city which may be physically harmful or otherwise detrimental to individuals and the community in the enjoyment of life, property and the conduct of business.

(A) No person shall conduct an event that involves the amplification of sound or speech above sixty (60) dB(A) for the purpose of presenting a musical selection, show, performance or concert at an outdoor venue within the limits of the city of Manchester without obtaining a noise permit issued by the Office of the City Clerk.

(B) The following general guidelines shall apply to the issuance of a noise permit. These guidelines are not all inclusive as other criteria may be established that is reasonable and prudent to protect the public or limit the anticipated detrimental impact of the events noise upon the community:

(1) All outdoor venues shall have a curfew of 10:00 p.m. Any event which exceeds this curfew shall be assessed the penalty identified in §111.99(C)(4) for each fifteen (15) minute period beyond this curfew.

(2) The Office of the City Clerk shall not grant a permit to conduct noise at level greater than 100dB(A) to be measured one hundred feet (100') from the noise source.

(3) Any sound board or mix position present at an event shall be placed at one hundred feet (100') from the noise source.

(4) The Office of the City Clerk may require any applicant to be monitored for sound levels to ensure compliance with this chapter. Monitoring may be conducted by a representative of the City or an independent third party using an appropriate sound level meter. In the event of third party monitoring, all expenses associated with the sound monitoring shall be assumed by the applicant.

(5) In granting a license, the Office of the City Clerk may impose additional conditions or stipulations it deems necessary and proper to preserve the intent of this chapter.

7

City of Manchester New Hampshire

In the year Two Thousand and Two

AN ORDINANCE

"Amending the Code of Ordinances of the City of Manchester by creating a new section within Chapter 111: Amusements establishing regulations for noise activities conducted in outdoor concert venues throughout the city and inserting new penalties in Section 111.99: Penalty to enforce these regulations.

Page 5 of 7

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

(6) Should an application for a noise permit be denied, the applicant can appeal the decision to the Committee on Administration/Information Systems of the Board of Mayor and Aldermen.

§ 111.72 PERMIT FEES.

Each application for a noise permit shall include an application fee of two hundred dollars (\$200.00) cash, money order or bank check made payable to the City of Manchester.

§ 111.73 PROHIBITED CONDUCT.

The following conduct is prohibited:

(A) Provide any false or inaccurate information to any City board, committee, commission or any employee of the City of Manchester, in an attempt to deceive or otherwise avoid compliance with this ordinance.

(B) Hinder, obstruct, delay, resist, interfere, or attempt to interfere with any authorized persons while in the performance of their duties under this ordinance.

(C) Emit or cause to be emitted any noise which exceeds the established limits in §111.71(B)(2) of this chapter.

(D) Violate any subsection of §111.71 of this chapter.

(E) Conduct an event that involves the amplification of sound or speech above sixty (60) dBA for the purpose of presenting a musical selection, show, performance

City of Manchester New Hampshire

In the year Two Thousand and Two

AN ORDINANCE

"Amending the Code of Ordinances of the City of Manchester by creating a new section within Chapter 111: Amusements establishing regulations for noise activities conducted in outdoor concert venues throughout the city and inserting new penalties in Section 111.99: Penalty to enforce these regulations."

Page 6 of 7

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

or concert at an outdoor venue in the city of Manchester without obtaining a license from the Office of the City Clerk pursuant to § 111.71(A).

- II. Amend the Code of Ordinances by deleting language within §111.99: Penalty as stricken (-----) and inserting new language as bolded (**bold**). Portions of §111.99: Penalty that remain unchanged appear in regular type.

§ 111.99 PENALTY.

(A) Any person who shall fail to comply with any of the provisions of this chapter or who shall violate any of the provisions set forth herein, **unless a penalty is specified elsewhere**, shall be subject to the penalties as set forth in § 10.99 of this code of ordinances.

(B) (1) Any person who commits an act prohibited or made unlawful by §§ 111.40 through ~~111.55~~ 111.73 of this chapter or fails to perform any act required by such subchapter shall be guilty of a violation. Each act of violation, **or in the case of continuous violation**, every day upon which any such violation shall occur shall constitute a separate offense. In addition, if the court finds for the city, the city shall recover its costs of suit including reasonable experts' fees, attorney fees, and necessary investigative costs. Parties held responsible for violations of §§ 111.40 through ~~111.55~~ 111.73 shall include corporate officers, partners, or owners as identified on the business license application or as may be otherwise identified by the ~~Police Department~~ City as a result of any related investigation.

(2) The Police Department is hereby authorized to seize any amusement device located within the city in contravention of any of the provisions of §§ 111.40 through 111.55. Upon such seizure the Police Department shall notify the owner of the seized devices, or the person in whose place of business the amusement device was placed, of such seizure and the reason therefor. The Police Department shall hold any such seized devices for a period of not less than ten days from the date of the required notification to the owner or operator of the premises. During this period the owner or operator may redeem any such machine by correcting the violation of this division which led to such seizure. Any amusement devices which are so seized and which are not redeemed within the ten-day period described in this division (B)(2) shall become the property of the city. Costs for transportation and storage charges will be billed to the

7

City of Manchester New Hampshire

In the year Two Thousand and Two

AN ORDINANCE

"Amending the Code of Ordinances of the City of Manchester by creating a new section within Chapter 111: Amusements establishing regulations for noise activities conducted in outdoor concert venues throughout the city and inserting new penalties in Section 111.99: Penalty to enforce these regulations."

Page 7 of 7

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

owner of any amusement devices seized and must be paid before the release of the devices from city storage. The city will be held harmless for any damage occurring during the act of confiscation, transportation, and storage of each device.

(C) Violations of § 111.73 Prohibited Conduct shall follow the penalty schedule below:

(1) FIRST OFFENSE:

The licensee or his representative shall be informed of the noise ordinance and corrective measures to achieve compliance. This shall constitute an official warning and should be accomplished in writing if possible.

(2) SECOND OFFENSE:

A citation shall be issued to the licensee or his representative in the amount of two hundred and fifty dollars (\$250.00).

(3) THIRD OFFENSE:

A citation shall be issued to the licensee or his representative in the amount of five hundred dollars (\$500.00).

(4) FOURTH AND SUBSEQUENT OFFENSES:

A citation shall be issued to the licensee or his representative in the amount of one thousand dollars (\$1000.00).

III. These ordinances shall take effect upon passage.



**City of Manchester
Office of the City Solicitor**

One City Hall Plaza
Manchester, New Hampshire 03101
(603) 624-6523 Fax (603) 624-6528
TTY: 1-800-735-2964
Email: solicitor@ci.manchester.nh.us

Thomas R. Clark
City Solicitor

Thomas I. Arnold, III
Deputy City Solicitor

Daniel D. Muller, Jr.
Kenneth R. Bernard
Michele A. Battaglia
Marc van Zanten

February 11, 2005

Leo Bernier, Clerk
Committee on Bills on Second Reading
One City Hall Plaza
Manchester, New Hampshire 03101

RE: Proposed Noise Ordinance

Dear Leo:

I have enclosed a copy of the proposed noise ordinance. As the ordinance is complicated and lengthy I would appreciate it if you could distribute copies to the members of the Committee so that they will have the opportunity to review the ordinance prior to their next meeting.

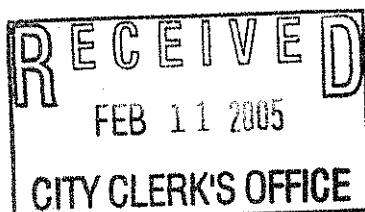
Thank you for your assistance.

Very truly yours,

Thomas I. Arnold, III
Deputy City Solicitor

TIA/hms

enclosure



“Amending the Code of Ordinances of the City of Manchester by repealing Chapter 94: Noise Regulations in its entirety and inserting a new Chapter 94: Noise Regulations.”

Chapter 94: Noise Regulations

Section

General Provisions

- 94.01 Purpose
- 94.02 Scope
- 94.03 Definitions
- 94.04 Enforcement
- 94.05 Measurements
- 94.06 Submission of Fees

Minimum Standards

- 94.10 Noise Levels
- 94.11 Exemptions
- 94.20 Motor Vehicles

License Requirements

- 94.30 Noise Activities; Permit Required
- 92.31 Permit Fees

8

Administration and Enforcement

- 94.40 Noise Variance Board
- 94.41 Application Fees
- 94.42 Application Procedures
- 94.43 Prohibited Conduct
- 94.44 Penalties

Statutory reference:

Authority of city to regulate noise, see R.S.A. 47:17 II & XV.

GENERAL PROVISIONS

§ 94.01 PURPOSE.

It is the policy of the Board of Mayor and Aldermen of the City of Manchester to protect, preserve and promote the health, safety, welfare, peace and quiet of the citizens of Manchester through the reduction, control and prevention of noise. It is the intent of this ordinance to establish standards that will eliminate and reduce unnecessary environmental noise throughout the community which may be physically harmful or otherwise detrimental to individuals and the community in the enjoyment of life, property and the conduct of business.

§ 94.02 SCOPE.

This ordinance shall only apply to noise originating within the city limits of the City of Manchester, NH that is traveling in the atmosphere or environment. This ordinance shall apply to all bodies of water within the city limits of the City of Manchester, irrespectively if they flow through or are contained partially or entirely within the city limits.

§ 94.03 DEFINITIONS.

For the purpose of this title, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AMBIENT SOUND LEVEL. The A-weighted sound level of all sound associated with a given environment, exceeded ninety percent (90%) of the time measured and being a composite of sounds from many sources during the period of observation while the sound from the noise source of interest is not present.

ANSI. The American National Standards Institute.

ANSI S SERIES STANDARDS. Those ANSI standards relevant to sound, acoustics, shock, vibration and bioacoustics.

A-WEIGHTED SOUND PRESSURE. The sound pressure level as measured with a sound level meter using the A-weighting network. The standard notation is dB(A) or dBA.

8

COMMERCIAL POWER EQUIPMENT. Any equipment or device rated at more than five horsepower and used for building repairs or property maintenance excluding snow removal equipment.

COMMERCIAL PREMISES. Any land parcel with buildings where the use of less than fifty percent (50%) of the gross floor area meets the definition of residential premises. Includes locations of various scale operating as retail, automotive use, restaurant, governmental, financial, entertainment and cultural and shopping centers as identified pursuant to the Manchester Zoning Ordinance.

CONSTRUCTION EQUIPMENT. Any device or mechanical apparatus operated by fuel, electric, or pneumatic power in the excavation, construction, repair, or demolition of any building, structure, land parcel, street, alley, waterway, or appurtenance thereto.

DECIBEL. A logarithmic unit of measure often used in measuring magnitudes of sound. The symbol is dB.

DOMESTIC POWER EQUIPMENT. Any equipment or device rated at five (5) horsepower or less and used for building repairs or grounds maintenance excluding snow removal equipment.

EMERGENCY VEHICLE. An authorized motor vehicle that has sound warning devices such as whistles, sirens and bells which can lawfully be used when responding to an emergency, during a police activity or which is required by state or federal regulations (i.e., reverse alarms).

EMERGENCY WORK. An activity made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from exposure to imminent danger. It includes work by private or public entities for providing or restoring immediately necessary service as well as all situations deemed necessary by the city.

EMERGENCY POWER GENERATOR. The equipment used to generate electrical power in the event of an interruption, malfunction or failure of the electrical power supplied by the service provider.

GROSS FLOOR AREA. The floor area within the inside perimeter of the exterior walls of the building under consideration, exclusive of vent shafts and courts, without deduction for corridors, stairways, closets, the thickness of interior walls, columns or other features. The floor area of a building or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above.

INDUSTRIAL PREMISES. Any premise where the production of goods, materials or knowledge takes place. May include locations for manufacturing, warehousing, research and development, distribution or other selected offices as identified pursuant to the Manchester Zoning Ordinance.

MOTOR VEHICLE. Any vehicle that is self-propelled, used primarily for transporting persons or property upon public roadways and required to be licensed according to motor vehicle registration laws. The term motor vehicle shall not include: aircraft, watercraft, motor vehicles

operated on private property for recreational or amusement purposes, vehicles used exclusively on stationary rails, or specialized utility vehicles normally used only on private property in the daily course of business such as forklifts, and pallet movers.

NOISE. Any sound that exceeds the standards set forth in this chapter, annoys or disturbs a reasonable person of normal sensibilities, or causes or tends to cause any adverse psychological or physiological effect on humans.

NOISE VARIANCE. Specific relief from the terms of this chapter as granted by the Noise Variance Board.

PERSON. An individual, corporation, partnership, association, organization or similar entity.

PREMISES. Any building, structure, land, utility or portion thereof, including all appurtenances, and shall also include yards, lots, courts, inner yards and real properties without buildings or improvements, owned or controlled by a person.

PROPERTY LINE. The real or imaginary line and its vertical extension which separates real property owned or controlled by any person from contiguous real property owned or controlled by another person. The vertical and horizontal boundaries of a dwelling unit in a multi-dwelling unit building, condominium, or townhouse complex shall not be considered property lines separating one (1) property from another.

PUBLIC PREMISES. All real property including appurtenances thereon which is owned or controlled by any governmental entity and shall include streets, alleys, parks and waterways.

RECEPTOR PREMISES. The premises (residential, commercial, industrial, or public) as listed in Table A which is receiving noise emitted from the source premises after crossing one or more property lines. Also referred to as the receiving premise.

RESIDENTIAL PREMISES. Any premises where single or multiple dwelling units exist and shall include primary schools, churches, nursing homes and similar institutional facilities including any commercial premises where the use of more than fifty percent (50%) of the gross floor area meets this definition of residential premise.

SOUND. An oscillation in pressure, stress, particle displacement and particle velocity which induces auditory sensation.

SOUND LEVEL METER. An apparatus for the measurement of sound levels. The sound level meter shall be of a design and have the characteristics of a Type 2 or better instrument as established by the American National Standards Institute, publication S1.4 entitled Specification for Sound Level Meters.

SOUND PRESSURE LEVEL. Twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of a sound to the reference pressure of twenty (20) microneutons per square meter (20×10^{-6} Newtons/meter²) and is expressed in decibels (dB).

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SOURCE PREMISES. The premises (residential, commercial, industrial, or public) as listed in Table A that is emitting noise that is crossing one or more property lines and impacting the receptor premises.

SNOW REMOVAL EQUIPMENT. Any equipment used for removing snow from land or building surfaces and shall include snowplows, snow blowers, snow sweepers, and snow shovels.

TABLE A. The reference table contained in § 94.10 of this chapter that details the maximum allowable noise levels for all premises in the City of Manchester, including a time of day allowance. Measurements of noise levels are made at the property line of the receiving premises.

TABLE B. The reference table contained in § 94.20 of this chapter that details the maximum allowable noise levels for all motor vehicles operating in the City of Manchester during any time of the day or night. Measurements of noise levels are made twenty-five (25) feet from the source motor vehicle.

TREE MAINTENANCE EQUIPMENT. Any equipment used in trimming or removing trees only and shall not be limited to chainsaws, chippers and stump removers.

§ 94.04 ENFORCEMENT.

The Chief of Police or his designee shall have and exercise the power to enforce the provisions of this title. Licenses or permits issued pursuant to this title shall also be enforced by a designee of the Office of the City Clerk. Enforcement shall include entering areas of public access or operation, free of charge, to ensure compliance and issuance of citations for any violations with penalties to be assessed as provided in §94.44 of this title.

§ 94.05 MEASUREMENTS.

For the purposes of this ordinance, the measurement of all physical parameters or entities associated with acoustics, sound, noise, or vibration shall comply with the most recent S series standards of ANSI, American National Standards Institute, Standards for Sound, Acoustics, Shock and Vibration, Bioacoustics. Furthermore, all physical parameters, or entities determined or calculated from such measurements relevant to acoustics, shock, vibration or bioacoustics shall be determined or calculated in accordance to the most recent S series standards of ANSI where so applicable.

§94.06 SUBMISSION OF FEES.

Fees for permits, applications and licenses shall be submitted with the applications under this chapter and shall be considered nonrefundable.

MINIMUM STANDARDS

§ 94.10 NOISE LEVELS.

Noise levels shall be measured at any point along the property line or within the property line of the receiving premises to determine compliance of the source. When it is determined that the ambient sound level at the receiving premises equals or exceeds the maximum allowable sound pressure level specified in Table A, then the ambient sound level is the standard which cannot be exceeded by the source. The following table identifies allowable noise levels within various areas throughout the City:

TABLE A

Maximum Allowable Noise Levels (in dBA) with Time of Day Allowance

	Receptor Premises							
	Residential		Commercial		Industrial		Public	
	7am-10pm	10pm--7am	7am--10pm	10pm--7am	7am--10pm	10pm--7am	7am--10pm	10pm--7am
Residential	55	50	65	60	80	75	75	70
Commercial	55 [60]	50 [60]	65	60	80	75	75	70
Industrial	55 [65]	50 [65]	65	60	80	75	75	70
Public	55 [60]	50 [60]	65	60	80	75	75	70
Body of Water	55	50	65	60	80	75	75	70
<i>(The numbers in brackets are the allowable limits that comply with § 94.11 (N) Exemptions.)</i>								

§ 94.11 EXEMPTIONS.

The maximum permissible sound pressure levels as specified in Table A shall not apply to sounds emitted from:

- (A) Any bell or chime from any building clock, school or church, not including any amplified bell or chime sounds emitted from loudspeakers.
- (B) Any siren, whistle or bell lawfully used by emergency vehicles or any other alarm systems used in case of fire, collision, civil defense, police activity or imminent danger.
- (C) Any aircraft in flight subject to federal law regarding noise control.
- (D) Any ground-based aircraft activity including testing or engine run-up noise.
- (E) Any motor vehicles designed for and operated on public streets, alleys, highways or freeways that are regulated by Table B.

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(F) Any tree maintenance equipment operated upon a residential, commercial, industrial or public premises provided that operation of tree maintenance equipment between the hours of 9:00 p.m. and 7:00 a.m. shall not exceed the maximum noise levels as specified in Table A.

(G) Any construction equipment or activities in compliance with § 94.43 (F) of this ordinance.

(H) Any domestic power equipment operated upon any residential, commercial, industrial or public premises between 7:00 a.m. and 10:00 p.m. provided that such equipment does not exceed a sound pressure level of eighty (80) dBA when measured at the property line of the receiving premise.

(I) Any commercial power equipment operated upon any residential, commercial, industrial or public premises between 7:00 a.m. and 10:00 p.m. provided that such equipment does not exceed a sound pressure level of eighty-eight (88) dBA when measured at the property line of the receiving premise.

(J) The musical instruments of any school marching band while performing at any sporting event or marching band competition, and the musical instruments of any school marching band practicing on school grounds between the hours of 9:00 a.m. and 8:00 p.m. that do not exceed sixty-five (65) dBA when measured at the property line of the receiving residential premise.

(K) Following a snowstorm, snow removal equipment operated on any premises between the hours of 5:00 a.m. and 10:00 p.m. provided that such equipment does not exceed the sound pressure limits for commercial power equipment (eighty-eight (88) dBA) or domestic power equipment (eighty (80) dBA) when measured at the property line of the receiving premise.

(L) Any power generator providing emergency electrical power at any hospital, health clinic, nursing home or similar facility where the loss of electrical power creates an immediate risk to the health, safety or welfare of any person, or at any premises where such equipment is required by the Manchester Fire Department. Additionally, the noise emitted during the routine testing of emergency electrical power generators shall not exceed eighty-eight (88) dBA when measured at the property line of the receiving premise. Routine testing shall not exceed one (1) hour in any one-week period, or two (2) hours in any six-week period and shall be confined to the hours of 10:00 a.m. to 4:00 p.m. or as otherwise approved.

(M) Any industrial, commercial, or public premises exceeding the standards of Table A at a receiving residential premises when the zoning of the receiving residential premises does not allow residential use (residential use is nonconforming). However, in such a situation, the noise emitted by the industrial, commercial, or public premises shall not exceed the standards for receiving industrial premises.

(N) Any industrial, commercial, or public premises exceeding the standards of Table A at a receiving residential premises when such industrial, commercial, or public premises and their emitted noise level were in existence prior to the existence of the residential premises, provided however that the existing industrial premises does not exceed sixty-five (65) dBA and the commercial premises do not exceed sixty (60) dBA when measured at the receiving residential premises.

(O) Any water craft or noise emanating from or on a body of water between the hours of 7:00 a.m. and 10:00 p.m. provided that such noise does not exceed a sound pressure level of eighty-eight (88) dBA when measured at the property line of the receiving property and further provided that between 10:00 p.m. and 7:00 a.m. such equipment does not exceed the maximum sound pressure levels as specified in Table A.

§ 94.20 MOTOR VEHICLES.

All noise levels from motor vehicles shall be measured at twenty-five (25) feet from the source vehicle to determine compliance. Except where preempted by state law the standards in Table B shall apply to all noise emitted from motor vehicles including any and all equipment thereon, under any condition of acceleration, deceleration, idle, grade or load and whether or not in motion.

TABLE B

Maximum Allowable Noise Levels for Motor Vehicles

Type of Vehicle	Time Period	Maximum Allowable Sound Pressure Level measured in dBA	Measurement Distance from Motor Vehicle
Motor vehicles weighing less than 10,000 pounds, manufacturers gross vehicle weight	At any time	80	25 feet

LICENSE REQUIREMENTS

§ 94.30 NOISE ACTIVITIES; PERMIT REQUIRED.

(A) No person shall conduct an event where noise activities will be present without obtaining a license issued by the Office of the City Clerk. A permit, hereinafter referred to as a noise permit, is required for activities including:

- (1) The artificial amplification of sound or speech above sixty (60) dBA. This includes, but not limited to, parades, concerts, circuses, public rallies, political speeches, or religious services that use amplified sound.
- (2) Any fireworks or pyrotechnique display.
- (3) The display, competition and exhibition of mechanical contrivances than can be expected to produce noise in excess of sixty (60) dBA.

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(B) The following general guidelines may be considered in the issuance of a noise permit. These guidelines are not all inclusive as other criteria may be established that is reasonable and prudent to protect the public or limit the anticipated detrimental impact of the events noise upon the community:

- (1) The City may request the applicant to submit a Community Noise Impact Assessment analysis prior to the issuance of a noise permit. This analysis shall conform to the ANSI S series standards for such work.
- (2) To permit the City to evaluate the community impact of a series of similar events at the same location, the City may request the applicant to construct a soundscape during the first event. This shall be in accordance with ANSI S series standards to be submitted to the City for evaluation of the impact upon the community, to make recommendations or establish parameters to reduce the adverse impact to the community of subsequent events.
- (3) In granting a license, the Office of the City Clerk may impose such conditions or stipulations, as it deems necessary and proper to preserve the intent of this chapter.
- (4) Should an application for a noise permit be denied, the applicant can appeal the decision to the Noise Variance Board.

§ 94.31 PERMIT FEES.

Each application for a noise permit pursuant to section shall include an application fee of seventy-five dollars (\$75.00) cash, money order or bank check made payable to the City of Manchester.

ADMINISTRATION AND ENFORCEMENT

§ 94.40 NOISE VARIANCE BOARD.

It is recognized that in initiating community noise limits, any number of unanticipated situations may occur. Although the City is primarily concerned with protecting, preserving and promoting the health, safety, welfare and peace and quiet of the citizens of Manchester, the City realizes that there may be preexisting conditions that need an extended period of time to conform to the noise limits imposed by this ordinance. The City also recognizes that events or incidents can occur where there was every good faith expectation of complying with the noise limits imposed by this ordinance, but for some unforeseen circumstance, those events or incidents failed to comply.

This section hereby establishes a Noise Variance Board in which members shall approve or deny variances to this chapter, hereinafter referred to as a noise variance. The board shall consist of five (5) members and up to five (5) alternates. All members shall be appointed by the Mayor and

subject to confirmation by the Board of Mayor and Aldermen for three (3) year terms. The initial board shall consist of two members to serve for a period of three (3) years, two members to serve for a period of two (2) years, one member to serve for a period of one (1) year. Alternates shall be appointed for three (3) year terms. Beginning with the first appointment made due to expiration of term members shall be appointed to serve for a period of three (3) years. Each member shall be a resident of the City of Manchester. At least one member of the board should, where possible, include a mechanical or civil engineer with formal training or experience in the field of acoustical engineering, sound abatement, acoustical measurements, environmental acoustics or expertise in a similar field. Alternate members shall perform the duties and responsibilities of a regular member when a regular member is absent or disqualified from consideration of a particular application.

The Noise Variance Board shall, on an annual basis, elect a chairman from among its members. The Board shall adopt and periodically amend rules of procedure for the conduct of business. Guidelines shall be established for the collection and maintenance of evidentiary material as to the disposition of noise variances as may be required by the City Solicitor.

§ 94.41 APPLICATION FEES.

Each application for a variance shall be accompanied by a nonrefundable fee of one hundred dollars (\$100.00). Fees may be submitted in cash, money order or bank check made payable to the City of Manchester.

§ 94.42 APPLICATION PROCEDURES.

Applications must be submitted to the Office of the City Clerk. General guidelines may be considered in the issuance of a noise variance. These guidelines are not all inclusive and other criteria may be established that is reasonable and prudent to protect the public or limit the anticipated detrimental impact of noise upon the community. The guidelines are as follows:

(A) Variances shall be granted prior to or in anticipation of an event.

(B) The City reserves the right to grant a variance after the fact if it is deemed by the Noise Variance Board to be in the public good, if the Board believes that an honest, fair and reasonable attempt was made to comply with the noise limits imposed by this ordinance, or the failure to comply was due to some unforeseen circumstance.

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(C) A variance for the continuation of a non-complying activity may be granted after a reasonable attempt was made to comply and may contain such stipulations as the Board may deem necessary to protect the public that may include, but is not limited to:

1. Regulation of times;
2. The erection of noise barriers, shielding or other noise abatement; and
3. A demonstration of compliance progress.

(D) The applicant bears the burden of presenting evidence sufficient to allow the Noise Variance Board to reach conclusions and make findings to support the authorization of a variance.

(E) The Board may require a public hearing on a certain matter to permit abutting landowners to present written or oral testimony for consideration of granting or denying a variance.

(F) The Board may request review and recommendations from various City departments including the Building Commissioner, Public Health Director, Director of Planning, Chief of Police, City Clerk or their designees. Testimony of department representatives may be requested at a variance hearing.

(G) Final decisions shall be made available within seventy-two (72) hours after a vote on an application. A written decision will be mailed to the applicant with copies made available to the departments of Health, Police and City Clerk.

(H) In granting a variance, the Board may impose such conditions or stipulations as it deems necessary and proper in order to preserve the intent of this chapter.

(I) All decisions by the Noise Variance Board are final and may not be appealed to any other municipal board, committee or commission.

(J) As community noise is a public health concern, noise variances shall only be granted for a reasonable period of time, not more than two (2) years.

(K) The renewal of a variance after two (2) years requires the consent of the Board of Mayor and Aldermen.

(L) Variances shall not be granted for continued or sustained violations that may be physically injurious to one or more persons as determined by the Public Health Director.

(M) Once an application has been denied by the Noise Variance Board, the same application may only be considered if the Board finds that the application is materially different in nature and degree from the prior application.

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§ 94.43 PROHIBITED CONDUCT.

The following conduct is prohibited:

(A) Provide any false or inaccurate information to any City board, committee, commission or any employee of the City of Manchester, in an attempt to deceive or otherwise avoid compliance with this ordinance.

(B) Hinder, obstruct, delay, resist, interfere, or attempt to interfere with any authorized person while in the performance of their duties under this ordinance.

(C) Emit or cause to be emitted any noise which leaves the premises on which it originates, crosses a property line, and enters onto any other premises in excess of the sound pressure levels during the time periods as specified in Table A, without a variance.

(D) Emit or cause to be emitted any noise within the public premises in excess of the limits defined in Table A without a variance.

(E) Conduct an event that includes noise activities in the City of Manchester without obtaining a license from the Office of the City Clerk pursuant to § 94.30.

(F) Operate any construction equipment or conduct any construction activities between the hours of 9:00 p.m. and 7:00 a.m. that exceed the noise limits of Table A. The City may grant variances from the construction restrictions if it can be demonstrated that a construction project will interfere with traffic if completed during daytime hours.

(G) Operate any trash compacting mechanism on any motor vehicle, or engage in any trash, rubbish or garbage collection activity between the hours of 10:00 p.m. and 7:00 a.m., when such activity takes place on any premises adjacent to a residential premises.

(H) Operate or permit the operation of any motor vehicle or combination of motor vehicles at any time or place when such operation exceeds the noise limits for the category of motor vehicle and for the designated time period as specified in Table B.

(I) Sound any horn or other audible signal device of an automobile, motorcycle, streetcar, or other vehicle unless it is necessary as a warning to prevent or avoid a traffic accident or reasonably inform or warn of a vehicle presence.

(J) Modify or change the exhaust muffler, air intake muffler or any other sound reducing device in such a manner that the noise emitted from the motor vehicle exceeds the sound pressure levels as established in Table B of § 94.20 except where permitted by state law.

(K) The noise limits in Table A and Table B notwithstanding, no person shall:

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- 1) Make, continue, or cause to be made or continued any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others, within the limits of the city.
- 2) Use, operate or permit to be played, used or operated of any radio, receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the inhabitants of a neighboring premises. The operation of any such set, instrument, phonograph, machine or device by a commercial establishment between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of 50 feet from the lot line, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.
- 3) Use, operate, or permit to be played, used, or operated, any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier, or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure in such a manner that the occupants of a neighboring premises disturbed or annoyed.
- 4) Yell, shout, hoot, whistle, or sing on the public streets, particularly between the hours of 11:00 p.m. and 7:00 a.m. or any time or place so as to annoy or disturb the quiet, comfort, or repose of persons in neighboring premises.
- 5) Keeping of any animal or bird which by causing frequent or long continued noise shall disturb the comfort or repose of any person in a neighboring premises.
- 6) Use any automobile, motorcycle, or vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise.
- 7) Transport rails, pillars, or columns of iron, steel or other material, over and along streets and other public places upon carts, drays, cars, trucks, or in any other manner so loaded as to cause loud noises or as to disturb the peace and quiet of such streets or other public places.

§ 94.44 PENALTIES.

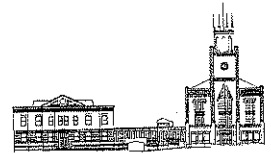
(A) Any person, firm or corporation who violates any provision of this Chapter for which another penalty is not specifically provided shall, upon conviction, be subject to a penalty provided under Section 38.06 (B) of the Code of Ordinances.

(B) If the court finds for the City, the City shall recover its costs of suit including reasonable expert fees, attorney fees and necessary investigation costs.



CITY OF MANCHESTER

Office of the City Clerk



Leo R. Bernier
City Clerk

Carol A. Johnson
Deputy City Clerk


Paula L-Kang
Deputy Clerk
Administrative Services

Matthew Normand
Deputy Clerk
Licensing & Facilities

Patricia Piecuch
Deputy Clerk
Financial Administration

MEMORANDUM

To: R. MacKenzie
Director of Planning

From: 
Leo R. Bernier
City Clerk

Date: February 3, 2005

Re: Shoreland Protection Act

On January 24, 2005 at a meeting of the Committee on Bills on Second Reading, it was voted to table the above-referenced item until such time as you have been able to address the Committee.

Enclosed for your review is a copy of an excerpt of the minutes regarding this matter.

Enclosure

pc: P. Goucher

9

Chairman Lopez addressed item 8 of the agenda:

8. Shoreland Protection Act.

Alderman DeVries moved for discussion. Alderman Roy duly seconded the motion. There being none opposed, the motion carried.

Alderman DeVries stated this is actually an item, I believe, I had asked sent to this Committee. Bob MacKenzie was going to review and make some recommendations to us and I don't see him here tonight, so I would move to table at this time to coordinate with the Planning Director at a future meeting.

Alderman Roy stated a question for Alderman DeVries. Didn't Bob give us, the full Board, a presentation on this recently or was that Lands and Buildings.

Alderman DeVries stated he did give a full presentation. There had been, after the presentation, some discussion about whether or not we should look at any changes or amendments and that's why it was decided to send it to this Committee. City Clerk, is there anything that you.

Deputy City Clerk Johnson replied it was referred to the Committee and I think at this point you probably want to address questions to Mr. MacKenzie.

Chairman Lopez stated I think there was one area/item that you were looking at, weren't you...not the whole document but one item.

Alderman DeVries stated the document I don't think is anything this Committee needs to adopt. It was sent here for discussion and I just wanted him to review and comment so that we could have the discussion at this Committee level.

Alderman Sysyn duly seconded the motion to table item 8. There being none opposed, the motion carried.

TABLED ITEMS

On motion of Alderman Roy, duly seconded by Alderman Sysyn, it was voted to remove items 9, 10 and 11 from the table for discussion.

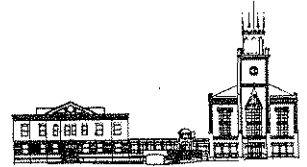


Robert S. MacKenzie, AICP
Director

CITY OF MANCHESTER

Planning and Community Development

Planning
Community Improvement Program
Growth Management



Staff to:
Planning Board
Heritage Commission
Millyard Design Review Committee

December 28, 2004

Honorable Board of Mayor and Aldermen
City Hall
One City Hall Plaza
Manchester, New Hampshire 03101

re: Shoreland Protection Act

Honorable Board Members:

As requested by the Board, I would like to take a few minutes to provide a brief presentation on the Shoreland Protection Act at you next meeting.

If you have any questions, please feel free to contact me.

Sincerely,

Robert S. MacKenzie, AICP
Director of Planning & Community Development

IN BOARD OF MAYOR & ALDERMEN

DATE: January 4, 2005

ON MOTION OF ALD. DeVries

SECONDED BY ALD. Forest

VOTED TO refer to the Committee on
Bills on Second Reading.

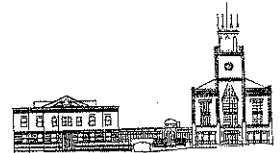
Carl Bernier
CITY CLERK

01-24-05 BJR
Tabled - pending
discussion with
Planning Dir.



CITY OF MANCHESTER

Office of the City Clerk



Leo R. Bernier
City Clerk

Carol A. Johnson
Deputy City Clerk

Paula L-Kang
Deputy Clerk
Administrative Services

Matthew Normand
Deputy Clerk
Licensing & Facilities

Patricia Piecuch
Deputy Clerk
Financial Administration

MEMORANDUM

To: Robert MacKenzie, Planning Director

From: Carol A. Johnson, Deputy City Clerk

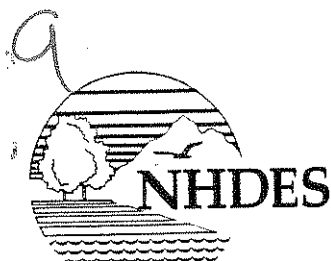
Date: November 22, 2004

Subject: Comprehensive Shoreland Protection Act

Please be advised that at a meeting of the Board of Mayor and Aldermen, held on November 16, 2004, it was voted to have the Planning Department make a presentation to the full Board on the Comprehensive Shoreland Protection Act.

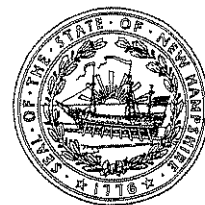
We are asking that you please inform our office once you are ready to make the presentation so that we can put you on the BMA agenda.

Enclosure



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2147 FAX (603) 271-6588



November 1, 2004

TO: Municipal Officials (Town Clerk, Code Enforcement Officer, Board of Selectmen,
Zoning Board of Adjustment, Conservation Commission, et al)

RE: Comprehensive Shoreland Protection Act – RSA 483-B

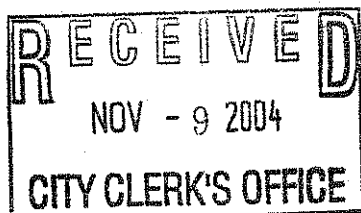
Dear Municipal Official:

The Department of Environmental Services (DES) has received many inquiries as to the proper interpretation and application of the provisions contained within the Comprehensive Shoreland Protection Act, RSA 483-B ("the Act"). Because the Act has been amended several times in the past few years, a copy of the current version of the Act is enclosed for your reference. In addition, DES recently sought advice from the Attorney General's Office on several issues relating to the Act. A copy of the Opinion of the Attorney General dated September 2, 2004 is also enclosed for your reference. Based upon that advice and the Department's experience in interpreting and enforcing the Act, this letter has been prepared to provide clarification on some of the provisions and common misconceptions relative to the Act.

1. THE ACT APPLIES TO LOCAL PERMITTING DECISIONS

All municipal permitting officials should be familiar with the Act. Under the Act, "local permits for work within the protected shoreland shall be issued *only when consistent* with the policies of this chapter." (RSA 483-B:3, with emphasis added). Thus, the Act applies to *every* permitting decision made by *every* municipality in the state with respect to a project within the protected shoreland. The protected shoreland is defined as those areas within 250 feet of a public waterbody such as coastal waters, a great pond, or major streams and rivers that are not designated under the Rivers Management and Protection Act.

The only shoreland work to which the Act does not apply is work in a municipality that has adopted a shoreland protection ordinance that has been *certified by the Office of Energy and Planning* as being more stringent than the Act. At this writing, Sunapee is the only municipality in New Hampshire whose ordinance has been certified. The Act empowers DES and the Attorney General's Office to take enforcement action for any violation of the Act, including the issuance of a permit that is not consistent with the provisions of the Act. (RSA 483-B:18).



DATE: November 16, 2004

ON MOTION OF ALD. DeVries

SECONDED BY ALD. Roy

VOTED TO have the Planning Department make a presentation to the Board.

CITY CLERK
TDD Access: Relay NH 1-800-735-2964

2. PRIMARY STRUCTURE SETBACK

The Act requires that "primary structures", typically residences, be set back behind the "primary building line." (RSA 483-B:9, II(b)). Under the original version of the Act, a municipality could establish its own shoreland building setback that would serve as the primary building line in that municipality.

However, in 2002, the Act was amended to establish an absolute distance of 50 feet from the waterbody as the primary building line. (2002 N.H. Laws 114). The amendment removed the provision that allowed municipalities to establish their own setback for primary structures. The amendment allowed municipalities that had established a setback of less than 50 feet prior to January 1, 2002 to maintain that lesser setback. Even in a municipality that adopted a setback of less than 50 feet prior to January 1, 2002, *all other provisions* of the Act continue to apply.

Under the current version of the Act, no municipality may issue a waiver that results in a setback of less than 50 feet. While a municipality that established a primary structure setback of less than 50 feet prior to January 1, 2002, may maintain that lesser setback, it *may not* waive any portion of the setback. By contrast, a municipality that established a primary structure setback greater than the state minimum of 50 feet may waive a portion of its setback, but only to the limit of the state 50-foot setback. For example, a town may waive its 65 foot setback but only to the limit of the 50 foot state setback. Because the Act does not authorize any variance to the primary structure setback, *there is no avenue available to DES for issuance of a variance to the primary structure setback.*

For all new construction subsequent to January 1, 2002 the entire primary structure, *including attached decks*, must be located behind the 50 ft setback. The only exception is construction in municipalities which, by ordinance adopted prior to January 1, 2002, established a setback less than 50 feet; however, in those communities, all construction must strictly comply with the full local setback.

3. EXPANSION OF NONCONFORMING STRUCTURES

Section 11 of the Act governs existing nonconforming structures. This provision, which applies to structures built prior to July 1, 1994, was amended in 2002 making the law stricter (2002 N.H. Laws 263:10).

Under the current version of the Act, structures located closer to the water than the primary building line may be "repaired, renovated, or replaced in kind using modern technologies, provided the result is a functionally equivalent use. Such repair or replacement may alter the interior design or existing foundation, but *no expansion of the existing footprint or outside dimensions shall be permitted.*" (RSA 482-B:11, I, emphasis added). DES interprets this to apply only to those portions of the primary structure that lie between the reference line and the setback line and not the portions of the structure located behind the setback line.

9

Thus, any expansion of an existing structure that is located within the primary structure setback requires a waiver from DES. DES can grant a waiver for redevelopment of a site that contains a nonconforming structure (i.e. the demolition and rebuilding of a structure), only when the redevelopment plans demonstrate that the proposed structure is "*more nearly conforming*" to the Act than the existing structure.

A waiver from DES is required when a property owner proposes an expansion of any of the outside dimensions of the existing structure, *including the height*. Addition of a second floor is considered an expansion even if the overall building height will not increase. Addition of a foundation (provided that the elevation of the first floor remains substantially the same) and a change in the pitch of the roof for structural reasons are not considered expansions. Also, for nonconforming structures erected prior to July 1, 1994, no waiver is required for the addition of a deck or open porch extending no more than 12 feet toward the reference line. *Existing decks and open porches may not be converted into part of the living space.*

MUNICIPALITIES SHOULD REQUIRE PROPERTY OWNERS TO SECURE ANY REQUIRED VARIANCE OR WAIVER FROM DES PRIOR TO THE ISSUANCE OF A BUILDING PERMIT. THIS WILL ASSURE THAT OWNERS DO NOT BEGIN CONSTRUCTION THAT DOES NOT CONFORM TO THE ACT.

4. CREATING A BUILDING ENVELOPE

Trees, shrubs and groundcover within the proposed building envelope are not included when calculating the basal area limitation or restrictions on the vegetative buffer under RSA 483-B:9, V(a)(2)(A). A building envelope is defined as follows:

- Between the reference line and the primary structure line - an area of 15 feet surrounding access roads, driveways, other impervious surfaces, septic systems and all structures except accessory structures.
- Between the primary structure line and 150 feet from the reference line - an area of 25 feet surrounding access roads, driveways, other impervious surfaces, septic systems, and all structures except accessory structures.
- For accessory structures - an area of 10 feet surrounding the footprint of the accessory structure.

The property owner is required to stake the building footprint(s) in the field prior to construction and prior to removal of vegetation.

5. TREES, SHRUB AND GROUNDCOVER REMOVAL

Outside of the building envelope, only 50% of the trees, shrubs and groundcover located within 150 ft of the reference can be removed, and these must be removed in a manner that leaves an "evenly distributed" stand of remaining vegetation. This includes all trees, saplings, shrubs and groundcover and means *no clear cutting of an open swathe for establishing a view.*

6. STUMPING

Woody vegetation that is removed from within 50 feet of the reference line *may not be stumped*, even for accessory structures. Stumping within this area is allowed only for beaches or docking facilities that have received a permit from DES.

7. ACCESSORY STRUCTURES

An accessory structure is defined as a structure that is on the same lot and is customarily incidental and subordinate to the primary structure. It includes such things as paths, driveways, patios, and other improved surfaces, pump houses, gazebos, woodsheds, garages, or other outbuildings. Water-dependent structures, such as boathouses, boat ramps and docks, are not considered accessory structures.

Accessory structures shall:

- Be constructed only if allowed by local zoning and if constructed in accordance with the local building code,
- Be no more than 20 feet in height,
- Be no larger than 150 square feet in size,
- Be set back at least 20 feet from the reference line and,
- Be built on land having less than a 25% slope.


8. REPLANTING

Replanting to restore the natural woodland buffer that is required as either mitigation or as part of an enforcement action must use native species that are appropriate for the soil type and exposure conditions of the property. Replanting must be done proportional to the density and/or to compensate for the basal area removed as part of the restoration of the property.

9

It is essential that DES and municipalities work closely with one another to develop full understanding and compliance with the Act. I hope that you find this information helpful in the valuable work that you do in the interests of your community and our state's valuable shorelands. If you have any questions or require additional information, I would encourage you to contact any member of my staff at 603-271-2147.

Sincerely;


Collis G. Adams CWS, CPESC
Wetlands Bureau Administrator

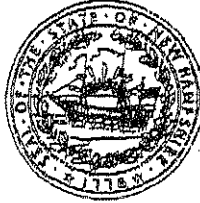
cc: Jennifer J. Patterson, Chief, Environmental Protection Bureau, NH AGO

Enclosures

9

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6297



KELLY A. AYOTTE
ATTORNEY GENERAL

September 2, 2004

Michael P. Nolin, Commissioner
Department of Environmental Services
29 Hazen Drive
Concord, New Hampshire 03301

Dear Commissioner Nolin:

This responds to your request for clarification of several issues involving the interaction between the Shoreland Protection Act and other state and municipal regulatory programs. Specifically, you inquired about the obligations of the Department of Environmental Services ("DES") under the Act when issuing other environmental permits, and the circumstances under which a local shoreland ordinance, rather than the Act, applies to a particular project.

I. THE SHORELAND PROTECTION ACT REQUIRES THE DEPARTMENT OF ENVIRONMENTAL SERVICES, IN PERMITTING A PROJECT WITHIN THE PROTECTED SHORELAND THAT FALLS UNDER SEPARATE PERMIT JURISDICTION OF THE AGENCY, ALSO TO ASSESS WHETHER THE APPLICANT'S PROPOSAL MEETS THE MINIMUM SHORELAND PROTECTION DEVELOPMENT STANDARDS.

The Comprehensive Shoreland Protection Act, RSA Chapter 483-B ("the Act"), originally enacted in 1991, functions statewide as an additional layer of regulation which overlays existing state and municipal permitting schemes, such as building permits, wetlands permits, and septic system approvals. 1991 N.H. Laws 303:1. Aimed at protecting the state's public waters and preventing "uncoordinated, unplanned and piecemeal development along the state's shorelines," the Act establishes generally applicable minimum standards for development within the protected shoreland. RSA 483-B:1 (Purpose); RSA 483-B:9 (Minimum Standards).¹ In keeping with its "comprehensive" nature, the Act applies to all state and local permitting decisions which might affect the development of waterfront property. RSA 483-B:3, I ("State and local permits for work within the protected shorelands

¹ The Act applies to land within 250 feet of the "reference line" or high water mark. RSA 483-B:4, XV (definition of "protected shoreland"), XVII (definition of "reference line").

9

Michael P. Nolin, Commissioner
 Department of Environmental Services
 September 2, 2004
 Page 2 of 6

shall be issued only when consistent with the policies of this chapter"). DES has authority to enforce the Act, as do municipalities in which protected shoreland is situated. RSA 483-B:5 (DES); RSA 483-B:8, III (municipalities).

The Act does not contain its own separate permit requirement.² Rather, its standards are designed to "piggy-back" on existing state and local permit proceedings. RSA 483-B:3, I & II; RSA 483-B:6; RSA 483-B:14 (rehearings and appeals). Section 6 of the Act defines the DES role in issuing permits for work within the protected shoreland:

- I. Within the protected shoreland, any person intending to:
 - (a) Engage in any earth excavation activity shall obtain all necessary local approvals in compliance with RSA 155-E.
 - (b) Construct a water-dependent structure, alter the bank, or construct or replenish a beach shall obtain approval and all necessary permits pursuant to RSA 482-A.
 - (c) Install a septic system as described in RSA 483-B:9, V(b)(1)-(3) shall obtain all permits pursuant to RSA 485-A:29.
 - (d) Conduct an activity resulting in a contiguous disturbed area exceeding 50,000 square feet shall obtain a permit pursuant to RSA 485-A:17.
 - (e) Subdivide land as described in RSA 483-B:9, V(d) and (e) shall obtain approval pursuant to RSA 485-A:29.
- II. In applying for these approvals and permits, such persons shall demonstrate to the satisfaction of the department that the proposal meets or exceeds the development standards of this chapter. The department shall grant, deny, or attach reasonable conditions to a permit listed in subparagraphs I(a)-(e), to protect the public waters or the public health, safety or welfare. Such conditions shall be related to the purposes of this chapter.

RSA 483-B:6 (Supp. 2003). In programs that predate the Act, DES has regulatory authority over the permits listed in RSA 483-B:6, I(b) – (e). RSA 482-A:3 (wetlands permit); RSA 485-A:17 (terrain alteration); RSA 485-A:29 (septic system and subdivision approval).

The well-established principles of statutory interpretation hold that statutes must be interpreted based on their plain language, focusing on the statute as a whole, not on isolated words or phrases. Transmedia Restaurant Co., Inc. v. Devereaux, 149 N.H. 454, 462 (2003). When the language used in a statute is clear and unambiguous, there is no need to examine the provision's legislative history. Merrill v. Great Bay Disposal Serv., 125 N.H. 540, 542

² As originally enacted, the Act required that "[e]ach person intending to construct a new or expanded structure within the protected shoreland, . . . or any other activity which will alter the existing character of the protected shoreland, shall seek a shoreland development permit" from DES. 1991 N.H. Laws 303:1; RSA 483-B:6 (1992 Bound Volume). However, in 1992 the permit requirement was eliminated, and section 6 of the Act was adopted in substantially its present form. 1992 N.H. Laws 235:10.

9
Michael P. Nolin, Commissioner
Department of Environmental Services
September 2, 2004
Page 3 of 6

(1984). "A widely accepted method of statutory construction is to read and examine the text of the statute and draw inferences concerning its meaning from its composition and structure." *Id.*, quoting *State v. Flynn*, 123 N.H. 457, 462 (1983).

Under the plain language of the Act, when an application for a DES permit triggers shoreland review under section 6, DES must proceed with its ordinary permitting process, but must also consider whether the proposal meets the minimum shoreland standards. These standards, contained in RSA 483-B:9, require (among other things) that primary structures be set back behind the primary building line,³ prohibit certain activities and substances within the protected shoreland,⁴ and establish specific requirements with respect to maintenance of a natural woodland buffer,⁵ septic systems,⁶ and prevention of erosion and siltation.⁷ If DES is not satisfied that the proposal meets the minimum standards of the Act, the agency must deny the application. RSA 483-B:6, II.

After careful review, we conclude that the agency's current practice should be modified so as to better comply with the Act. Prior to issuing a permit, DES must be satisfied that the proposal meets the Act's minimum standards. RSA 483-B:6, II. Currently, DES has no formal mechanism for reviewing plans for a proposal's shoreland impacts, taken separately from the standard permit requirements under other regulatory statutes. The shoreland rules require applicants for the permits listed in RSA 483-B:6, I to certify that their projects meet the minimum shoreland standards. N.H. Code of Admin. Rules, PART Env-Ws 1409. Consistent with this rule, the DES practice has been to rely on a combination of the applicant's certification and a permit condition requiring compliance with the Act.

Relying on the applicant's certification and the prospect of enforcement action for noncompliance is not sufficient to demonstrate "satisfaction." Instead, when issuing an environmental permit for a project located within the protected shoreland, DES must make affirmative findings showing the proposal's consistency with the minimum standards of the Act. To provide a basis for these findings, the staff must request that the applicant provide information sufficient to demonstrate that the minimum standards are satisfied. Then, in issuing or denying the permit, the agency must make findings to support its conclusion, and condition the permit on compliance with any plans, specifications or techniques necessary to ensure that the project conforms with the minimum standards.

For example, the DES wetlands program might receive an application under RSA 482-A:3 for a boathouse from a property owner who also intends as part of the same

³ RSA 483-B:9, II(b).

⁴ The Act prohibits salt storage yards, automobile junk yards and solid or hazardous waste facilities, as well as the use of fertilizer within 25 feet of the reference line. RSA 483-B:9, II(a) and (d).

⁵ RSA 483-B:9, V(a).

⁶ RSA 483-B:9, V(b).

⁷ RSA 483-B:9, V(c). In addition, the Act contains other minimum standards concerning lot size, public utilities, and existing waste facilities. RSA 483-B:9, V(d-f).

9

Michael P. Nolin, Commissioner
 Department of Environmental Services
 September 2, 2004
 Page 4 of 6

"project" to construct or modify other structures within the protected shoreland.⁸ Under these circumstances, DES should review not only the boathouse plans, but also the plans for the other aspects of the project. To ensure that DES receives the necessary information from the applicant, I recommend that the standard application forms be modified to include a question about whether additional work in the protected shoreland is planned as part of the same project. For applicants who answer in the affirmative, there should be an additional form in which they must provide details about those aspects of the project. The application should not be considered complete until the applicant has provided this information.⁹ Some projects may require multiple DES permits (for example, both wetlands and site specific). For such projects, there should be internal coordination within the agency to ensure that the shoreland review is only performed once, and is incorporated into each permit issued.

You also asked about the appropriate appeal route for DES permitting decisions under section 6 of the Act. The Act specifically addresses this issue:

Where the requirements of this chapter amend the existing statutory authority of the department or other agencies relative to certain established regulatory programs and shall be enforced under these established regulatory programs, the existing procedures governing contested cases and hearings and appeals regarding these requirements shall apply. Where requirements of this chapter are new and do not amend existing statutory authority relative to any established regulatory programs, the procedures set forth in RSA 541-A:31 for contested cases shall apply.

RSA 483-B:14 (emphasis added). Thus, any administrative appeal of a permitting decision is governed by the procedure specified in the statute under which the underlying permit was granted. See generally RSA 21-O:14, governing administrative appeals from DES decisions. For wetlands permits, appeal should be to the Wetlands Council (see RSA 482-A:10 and RSA 21-O:5-a); for subsurface and site specific permits, appeal should be to the Water Council (see RSA 21-O:7). Where the agency is undertaking enforcement action under the Act itself, appeal would be to the Water Council for administrative orders, and to the New Hampshire Supreme Court under RSA ch. 541 for administrative fines. RSA 21-O:7, IV; RSA 483-B:5, V (administrative orders); RSA 483-B:18, III(c)(administrative fines).

⁸The Act says "proposal," not "project." RSA 483-B:6, II. However, given the subject matter and broad applicability of the Act, we conclude that the word "proposal" as used in RSA 483-B:6, II should be read broadly to include all work contemplated by the applicant as an integrated project on the property within the protected shoreland at the time the application for the DES permit is submitted. A narrower reading would confine the DES review to the criteria in effect prior to the Act, and undermine the Act's purpose.

⁹This is important for programs with statutory deadlines for acting on complete applications. See, e.g., RSA 482-A:3, XIV (Supp. 2003)(DES must complete review of wetlands application within set number of days of notice of administrative completeness, or application will be deemed granted).

9 Michael P. Nolin, Commissioner
Department of Environmental Services
September 2, 2004
Page 5 of 6

II. A MUNICIPAL ORDINANCE CAN APPLY INSTEAD OF THE SHORELAND PROTECTION ACT ONLY AFTER THE OFFICE OF ENERGY AND PLANNING HAS CERTIFIED TO THE DEPARTMENT OF ENVIRONMENTAL SERVICES THAT THE LOCAL ORDINANCE IS AT LEAST AS STRINGENT AS THE ACT.

Your second question concerns the circumstances under which a municipal shoreland ordinance applies instead of the standards in the Act. We conclude that a municipal ordinance can render the Act wholly inapplicable, but only when that ordinance has been certified by the Office of Energy and Planning ("OEP") as being equally stringent to the Act. However, with respect to primary building setbacks only, a setback less than fifty feet may apply in a municipality that adopted the setback prior to January 1, 2002.

Shoreland property is exempt from the Act if it is located in a municipality whose local shoreland ordinance has been certified by OEP. Specifically, the Act provides as follows:

I. Subject to paragraph II, the provisions of this chapter shall not apply to any applicant whose land is in a municipality that has adopted a shoreland protection ordinance under RSA 674:16, the provisions of which are at least as stringent as similar provisions in this chapter. The director of the office of energy and planning shall certify to the commissioner that the provisions of a local ordinance are at least as stringent as similar provisions in this chapter.

II. If a municipality has a local ordinance that does not contain a counterpart to all of the provisions of this chapter, the more stringent provisions shall apply.

RSA 483-B:19 (Supp. 2003 and 2004 N.H. Laws 257:44). While paragraph II was added in 2002,¹⁰ the requirement of OEP certification has remained unchanged since the Act took effect in 1994.¹¹

In order for a municipality to qualify for the exemption, the plain language of section 19 requires not only that the local ordinance be as strict as the Act, but also that OEP so certify to DES. If the exemption could take effect without OEP certification, the language requiring certification would be impermissibly superfluous. Merrill v. Great Bay Disposal

¹⁰ 2002 N.H. Laws 263:12.

¹¹ The original 1991 version of the law provided that the Act would not apply in any municipality that had adopted a draft model ordinance provided by the office of state planning, the predecessor to OEP. See 1991 N.H. Laws 303:1; RSA 483-B:19 (1992 Bound Volume). However, the certification requirement, in substantially its current form, was substituted prior to the law taking effect in 1994. RSA 483-B:19 (2001 Bound Volume); 1994 N.H. Laws 383:20. The provision has also been amended several times, most recently in 2004, to reflect changes in the name of the agency performing the certification. 2003 N.H. Laws 319:9; 2004 N.H. Laws 257:44.

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Michael P. Nolin, Commissioner
Department of Environmental Services
September 2, 2004
Page 6 of 6

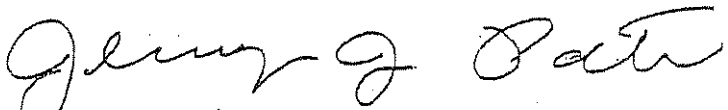
Serv., 125 N.H. 540, 543 (1984)(all words of statute must be given effect; legislature not presumed to use superfluous words). Requiring an affirmative certification by OEP is also consistent with the clear legislative intent that the Act be comprehensive in its application, and that its standards apply to all state and local permits. See RSA 483-B:3 (requiring all state and local permits to be consistent with the Act).

The primary building setback is the only provision of the Act which may vary among municipalities, without OEP certification. Prior to a 2002 amendment, a municipality could establish its own primary building setback, whether lesser or greater than the figure of fifty feet established under the Act. RSA 483-B:9, II (2001 Bound Volume). Under an amendment to the Act which took effect on July 2, 2002, the primary building line is established absolutely at "50 feet from the reference line." 2002 N.H. Laws 114:1; RSA 483-B:9, II (Supp. 2003). Nevertheless, the general court expressly allowed municipalities which had, prior to January 1, 2002, established a setback of less than fifty feet, to maintain that different setback. 2002 N.H. Laws 114:1. Thus, while an uncertified ordinance cannot supplant the Act, certain municipalities whose ordinances have not been certified by OEP may nevertheless have a primary building setback which varies from that established under the Act. Even in those municipalities with different setbacks, however, all other provisions of the Act apply.

In sum, the standards of the Act apply to all state and local permitting decisions, unless the local ordinance has been properly certified by OEP. Both the state and municipalities have authority to enforce the Act; it is worth noting that violations include not only construction that fails to conform with the minimum standards, but also issuance of a permit that is not consistent with the policies of the Act. RSA 483-B:3, I.

I trust this responds to your inquiry. Given the previous uncertainty on the interpretation of these provisions, both within the agency and in the community at large, I recommend that DES undertake outreach consistent with this opinion to ensure affected entities are aware of the Act's requirements.

Very truly yours,



Jennifer J. Patterson
Senior Assistant Attorney General
Environmental Protection Bureau
(603) 271-3679

JJP:mtm

OPN-04-0002

cc: MaryAnn Manoogian, Director, OEP

9

The Comprehensive Shoreland Protection Act

Statute

RSA 483-B

Pages 1-16

Rules

Env-Ws 1400

Pages 17-26

Index

Pages 27-30

2002



9

The Comprehensive Shoreland Protection Act

RSA 483-B

July 2002

Table of Contents

483-B:1 Purpose. – The general court finds that:	2
483-B:2 Minimum Standards Required:	2
483-B:3 Consistency Required:	3
483-B:4 Definitions. – In this chapter:	3
483-B:5 Enforcement by Commissioner; Duties; Woodland Buffer:	6
483-B:6 Prior Approval; Permits:	7
483-B:7 Reporting; On-Site Inspections; Local Participation:	7
483-B:8 Municipal Authority:	7
483-B:9 Minimum Shoreland Protection Standards:	8
I. The Standards in This Section	8
II. Restrictions	8
(a) Salt Storage Yards, Automobile Junk Yards, And Solid or Hazardous Waste Facilities	8
(b) Primary Structures	8
(c) Water Dependent Structures	8
(d) Fertilizer	8
III. Public Water Supply Facilities	8
IV. Public Water And Sewage Treatment Facilities	8
IV-a. Hydro Electric Facilities	9
IV-b. Public Utility Lines	9
IV-c. Existing Solid Waste Facilities	9
IV-d. Placement of Solid Waste	9
V. Minimum Standards	9
(a) Natural Woodland Buffer	9
(b) Septic Systems	10
(c) Erosion and Siltation	10
(d) Minimum Lots and Residential Development In the Protected Shoreland	11
(e) Minimum Lots And non-residential Development In The Protected Shoreland	11
(f) Common Owners	12
(g) Variances	12
483-B:10 Nonconforming Lots of Record:	12
483-B:11 Nonconforming Structures:	12
483-B:13 Public Hearing and Notice to Abutter:	13
483-B:14 Rehearings and Appeals:	13
483-B:15 Gifts, Grants and Donations:	14
483-B:16 Assistance to Municipalities; Office of State Planning:	14
483-B:17 Rulemaking:	14
483-B:18 Penalties:	15
483-B:19 Applicability:	15
483-B:20 Designated Rivers:	16

9

The Comprehensive Shoreland Protection Act
RSA 483-B

483-B:1 Purpose. – The general court finds that:

I. The shorelands of the state are among its most valuable and fragile natural resources and their protection is essential to maintain the integrity of public waters.

I-a. A natural woodland buffer, consisting of trees and other vegetation located in areas adjoining public waters, functions to intercept surface runoff, wastewater, subsurface flow, and deeper groundwater flows from upland sources and to remove or minimize the effects of nutrients, sediment, organic matter, pesticides, and other pollutants and to moderate the temperature of near-shore waters.

II. The public waters of New Hampshire are valuable resources held in trust by the state. The state has an interest in protecting those waters and has the jurisdiction to control the use of the public waters and the adjacent shoreland for the greatest public benefit.

III. There is great concern throughout the state relating to the utilization, protection, restoration and preservation of shorelands because of their effect on state waters.

IV. Under current law the potential exists for uncoordinated, unplanned and piecemeal development along the state's shorelines, which could result in significant negative impacts on the public waters of New Hampshire.

Source. 1991, 303:1.

483-B:2 Minimum Standards Required:

To fulfill the state's role as trustee of its waters and to promote public health, safety, and the general welfare, the general court declares that the public interest requires the establishment of standards for the subdivision, use, and development of the shorelands of the state's public waters. The development standards provided in this chapter shall be the minimum standards necessary to protect the public waters of the state of New Hampshire. These standards shall serve to:

I. Further the maintenance of safe and healthful conditions.

II. Provide for the wise utilization of water and related land resources.

III. Prevent and control water pollution.

IV. Protect fish spawning grounds, aquatic life, and bird and other wildlife habitats.

V. Protect buildings and lands from flooding and accelerated erosion.

VI. Protect archaeological and historical resources.

VII. Protect commercial fishing and maritime industries.

VIII. Protect freshwater and coastal wetlands.

IX. Control building sites, placement of structures, and land uses.

X. Conserve shoreline cover and points of access to inland and coastal waters.

9

The Comprehensive Shoreland Protection Act
RSA 483-B

- XI. Preserve the state's lakes, rivers, estuaries and coastal waters in their natural state.
- XII. Promote wildlife habitat, scenic beauty, and scientific study.
- XIII. Protect public use of waters, including recreation.
- XIV. Conserve natural beauty and open spaces.
- XV. Anticipate and respond to the impacts of development in shoreland areas.
- XVI. Provide for economic development in proximity to waters.

Source. 1991, 303:1. 1992, 235:1, 2. 1994, 383:1, eff. July 1, 1994.

483-B:3 Consistency Required:

- I. All state agencies shall perform their responsibilities in a manner consistent with the intent of this chapter. State and local permits for work within the protected shorelands shall be issued only when consistent with the policies of this chapter.
- II. When the standards and practices established in this chapter conflict with other local or state laws and rules, the more stringent standard shall control.
- III. All agricultural activities and operations in the state as defined in RSA 21:34-a and as governed by RSA 430, including the use of animal manure, lime, wood ash, irrigation, and the clearing of land for agricultural utilization, and other agricultural technologies, shall be exempt from the provisions of this chapter, provided such activities and operations are in conformance with the most recent best management practices determined by the United States Department of Agriculture Natural Resources Conservation Service, the United States Department of Agriculture Cooperative Extension Service and the department of agriculture, markets, and food. Persons carrying out such agricultural activities and operations in the protected shoreland shall work directly with the local representatives of the above agencies for their particular property.

Source. 1991, 303:1. 1992, 235:21. 1995, 130:8, eff. July 23, 1995; 206:2, eff. Aug. 11, 1995.

483-B:4 Definitions. – In this chapter:

- I. "Abutter" means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration.
- II. "Accessory structure" means a structure, as defined in paragraph XXII of this section, on the same lot and customarily incidental and subordinate to the primary structure, as defined in paragraph XIV of this section; or a use, including but not limited to path, driveways, patios, any other improved surface, pump houses, gazebos, woodsheds, garages, or other outbuildings.
- III. "Basal area" means the cross sectional area of a tree measured at a height of 4-1/2 feet above

9

The Comprehensive Shoreland Protection Act
RSA 483-B

the ground, usually expressed in square feet per acre for a stand of trees.

IV. "Commissioner" means the commissioner of the department of environmental services or designee.

V. "Department" means the department of environmental services.

VI. "Disturbed area" means an area in which natural vegetation is removed, exposing the underlying soil.

VII. "Ground cover" means any herbaceous plant which normally grows to a mature height of 4 feet or less.

VIII. "Lot of record" means a legally created parcel, the plat or description of which has been recorded at the registry of deeds for the county in which it is located.

IX. [Repealed.]

X. "Municipality" means a city, town, village district if specifically authorized to zone by the legislature, or county in respect to unincorporated towns or unorganized places or any combination thereof pursuant to RSA 53-A.

XI. "Natural woodland buffer" means a forested area consisting of various species of trees, saplings, shrubs, and ground covers in any combination and at any stage of growth.

XI-a. "Ordinary high water mark" means the line on the shore, running parallel to the main stem of the river, established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the immediate bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. Where the ordinary high water mark is not easily discernable, the ordinary high water mark may be determined by the department of environmental services.

XII. "Person" means a corporation, company, association, society, firm, partnership or joint stock company, as well as an individual, a state, and any political subdivision of a state or any agency or instrumentality thereof.

XIII. "Primary building line" means a setback from the reference line.

XIV. "Primary structure" means a structure as defined in paragraph XXII of this section that is central to the fundamental use of the property and is not accessory to the use of another structure on the same premises.

XV. "Protected shoreland" means, for natural, fresh water bodies without artificial impoundments, for artificially impounded fresh water bodies, and for coastal waters and rivers, all land located within 250 feet of the reference line of public waters.

XVI. "Public waters" shall include:

(a) All fresh water bodies listed in the official list of public waters published by the department

9

The Comprehensive Shoreland Protection Act
RSA 483-B

pursuant to RSA 271:20, II, whether they are great ponds or artificial impoundments.

(b) Coastal waters, being all waters subject to the ebb and flow of the tide, including the Great Bay Estuary and the associated tidal rivers.

(c) Rivers, meaning all year-round flowing waters of fourth order or higher, as shown on the now current version of the U.S. Geological Survey 7 1/2' topographic maps. Stream order shall be determined using the Strahler method, whereby the highest year-round streams in a watershed are first order streams, their juncture yields second order streams, the juncture of second order streams yields third order streams, et seq. A listing of the streams of fourth order and higher shall be prepared and maintained by the office of state planning and delivered to the commissioner 30 days after the effective date of this act.

XVII. "Reference line" means:

(a) For natural fresh water bodies without artificial impoundments, the natural mean high water level as determined by the Department of Environmental Services.

(b) For artificially impounded fresh water bodies with established flowage rights, the limit of the flowage rights, and for water bodies without established flowage rights, the waterline at full pond as determined by the elevation of the spillway crest.

(c) For coastal waters, the highest observable tide line, which means a line defining the furthest landward limit of tidal flow, not including storm events, which can be recognized by indicators such as the presence of a strand line of flotsam and debris, the landward margin of salt tolerant vegetation, or a physical barrier that blocks further flow of the tide.

(d) For rivers, the ordinary high water mark.

XVIII. "Removal or removed" means cut, sawed, pruned, girdled, felled, pushed over, buried, burned, killed, or otherwise destructively altered.

XVIII-a. "Repeat violation" means a violation that occurs within 3 years of notification by the department of a prior violation, as defined in RSA 483-B:18, I, whether on the same site or by the same person or entity on a second site. Each day of continuing violation after notification of that violation shall be considered a repeat violation.

XVIII-b. "Repair" means work conducted to restore an existing, legal structure by partial replacement of worn, broken, or unsound parts or to fix a specific defect, during which all of the exterior dimensions are intact and remain so during construction.

XVIII-c. "Replace in kind" means that substitution of a new structure for an existing legal structure, whether in total or in part, with no change in size, dimensions, footprint, interior square footage, and location, with the exception of changes resulting in an increase in the setback to public waters.

XVIII-d. "Replacement system" means a septic system that is not considered new construction under RSA 485-A:29-44 and rules adopted to implement it.

9

The Comprehensive Shoreland Protection Act
RSA 483-B

XIX. "Residential unit" means a structure, or portion thereof, providing complete and independent living facilities, including permanent facilities for living, sleeping, eating, cooking, and sanitation which are used in common by one or more persons.

XX. "Sapling" means any woody plant which normally grows to a mature height greater than 20 feet and has a diameter less than 6 inches at a point 4-1/2 feet above the ground.

XX-a. "Shoreland frontage" means the average of the distances of the actual natural shoreline footage and a straight line between property lines.

XXI. "Shrub" means any multi-stemmed woody plant which normally grows to a mature height of less than 20 feet.

XXII. "Structure" means anything built for the support, shelter or enclosure of persons, animals, goods, or property of any kind, as well as anything constructed or erected with a fixed location on or in the ground, exclusive of fences.

XXIII. "Subdivision" means subdivision as defined in RSA 672:14.

XXIV. "Tree" means any woody plant which normally grows to a mature height greater than 20 feet and which has a diameter of 6 inches or more at a point 4-1/2 feet above the ground.

XXV. "Urbanization" means the concentrated development found in the sections of towns or cities where there has been an historic pattern of intensive building for commercial or industrial use, or mixed residential, commercial, and industrial use.

XXVI. "Water dependent structure" means a structure that services and supports activities that require direct access to, or contact with the water, or both, as an operational necessity and that requires a permit under RSA 482-A, including but not limited to a dock, wharf, pier, breakwater, beach, boathouse, retaining wall, or launching ramp.

Source. 1991, 303:1. 1992, 235:3-7, 22. 1994, 383:2-5, 22, I, eff. July 1, 1994. 1996, 17:1, 2, eff. June 14, 1996; 228:65, eff. July 1, 1996.

483-B:5 Enforcement by Commissioner; Duties; Woodland Buffer:

I. The commissioner, with the advice and assistance of the office of state planning, department of resources and economic development and department of agriculture, markets, and food, shall enforce the provisions of this chapter.

II. The commissioner or his designee may, for cause, enter upon any land or parcel at any reasonable time to perform oversight and enforcement duties provided for in this chapter.

III. [Repealed.]

IV. To encourage coordination of state and local enforcement measures, the commissioner shall notify, at the time of issuance or filing, the local governing body of enforcement action undertaken by the state in respect to protected shoreland within the municipality by sending it copies of relevant administrative orders issued and pleadings filed.

9

The Comprehensive Shoreland Protection Act
RSA 483-B

V. The commissioner may issue an order to any person in violation of this chapter, of rules adopted under this chapter, or of any condition of a permit issued under this chapter.

Source. 1991, 303:1. 1992, 235:8, 9. 1994, 383:6, 22, II. 1995, 130:4, eff. July 23, 1995.

483-B:6 Prior Approval; Permits:

I. Within the protected shoreland, any person intending to:

- (a) Engage in any earth excavation activity shall obtain all necessary local approvals in compliance with RSA 155-E.
- (b) Construct a water dependent structure, alter the bank, or construct or replenish a beach shall obtain approval and all necessary permits pursuant to RSA 482-A.
- (c) Install a septic system as described in RSA 483-B:9, V(b)(1)-(3) shall obtain all permits pursuant to RSA 485-A:29.
- (d) Conduct an activity resulting in a contiguous disturbed area exceeding 50,000 square feet shall obtain a permit pursuant to RSA 485-A:17.
- (e) Subdivide land as described in RSA 483-B:9, V(d) and (e) shall obtain approval pursuant to RSA 485-A:29.

II. In applying for these approvals and permits, such persons shall demonstrate to the satisfaction of the department that the proposal meets or exceeds the development standards of this chapter. The department shall grant, deny, or attach reasonable conditions to a permit listed in subparagraphs I(a)-(e), to protect the public waters or the public health, safety or welfare. Such conditions shall be related to the purposes of this chapter.

Source. 1991, 303:1. 1992, 235:10, eff. Jan. 1, 1993. 1996, 17:3, eff. June 14, 1996.

483-B:7 Reporting; On-Site Inspections; Local Participation:

The department may devise a system whereby municipal officials may voluntarily assist with the permitting process under RSA 483-B:6 and the subsequent enforcement of permit conditions, by performing certain reporting functions relative to on-site inspections. Utilization of such reports shall be at the department's discretion, but may, when appropriate, obviate the need for further on-site review by department staff.

Source. 1991, 303:1. 1992, 235:23, eff. Jan. 1, 1993.

483-B:8 Municipal Authority:

I. Municipalities may adopt land use control ordinances relative to all protected shorelands which are more stringent than the minimum standards contained in this chapter.

II. Municipalities are encouraged to adopt land use control ordinances for the shorelands of water bodies and water courses other than public waters.

9

The Comprehensive Shoreland Protection Act
RSA 483-B

III. Municipalities in which protected shoreland is situated may enforce the provisions of this chapter by issuing cease and desist orders and by seeking injunctive relief or civil penalties as provided in RSA 483-B:18, III(a) and (b). Civil penalties and fines collected by the court shall be remitted within 14 days to the treasurer of the municipality prosecuting said violations, for the use of the municipality. Any municipality electing to enforce the provisions of this chapter shall send copies of any pleading to the attorney general at the time of filing. Municipalities bordering the same water body are encouraged to employ jointly a single code enforcement officer to monitor compliance.

IV. The authority granted to municipalities under this chapter shall not be interpreted to extend to RSA 430:28-48.

V. Municipalities bordering the same water body are encouraged to employ jointly a single code enforcement officer to monitor compliance.

Source. 1991, 303:1. 1992, 235:11, eff. Jan. 1, 1993.

483-B:9 Minimum Shoreland Protection Standards:

I. The standards in this section are designed to minimize shoreland disturbance so as to protect the public waters, while still accommodating reasonable levels of development in the protected shoreland. Development outside the protected shoreland shall conform to local zoning and local ordinances and shall not be subject to standards established in this chapter.

II. Within the protected shoreland the following restrictions shall apply:

- (a) The establishment or expansion of salt storage yards, automobile junk yards, and solid or hazardous waste facilities shall be prohibited.
- (b) Primary structures shall be set back behind the primary building line which is 50 feet from the reference line.
- (c) A water dependent structure, meaning one which is a dock, wharf, pier, breakwater, or other similar structure, or any part thereof, built over, on, or in the waters of the state, shall be constructed only as approved by the department, pursuant to RSA 482-A.
- (d) No fertilizer, except limestone, shall be used within 25 feet of the reference line of any property. Twenty-five feet beyond the reference line, low phosphate, slow release nitrogen fertilizer or limestone, may be used on lawns or areas with grass.

III. Public water supply facilities, including water supply intakes, pipes, water treatment facilities, pump stations, and disinfection stations shall be permitted by the commissioner as necessary, consistent with the purposes of this chapter and other state law. Private water supply facilities shall not require a permit.

IV. The placement and expansion of public water and sewage treatment facilities shall be permitted by the commissioner as necessary, consistent with the purposes of this chapter and other state law.

9

The Comprehensive Shoreland Protection Act
RSA 483-B

IV-a. Hydro electric facilities, including, but not limited to, dams, dikes, penstocks, and powerhouses, shall be recognized as water dependent, and shall be permitted by the commissioner as necessary, consistent with the purposes of this chapter and other state law.

IV-b. Public utility lines and associated structures and facilities shall be permitted by the commissioner as necessary, consistent with the purposes of this chapter and other state law.

IV-c. An existing solid waste facility which is located within 250 feet of the reference line of public waters under this chapter may continue to operate under an existing permit, provided it does not cause degradation to an area in excess of that area under permit.

IV-d. No solid waste facility shall place solid waste within 250 feet of the reference line of public waters under this chapter except as expressly permitted under RSA 483-B:9, IV-c. However, any solid waste facility may be allowed, subject to permitting conditions under RSA 149-M:9, to erect accessory structures and conduct other activities consistent with the operation of the facility within 250 feet of the reference line of public waters under this chapter, such as filling, grading and installing monitoring wells and other drainage structures as is consistent with its solid waste permit as issued by the department of environmental services. Under no circumstances shall the toe of any slope encroach within 150 feet of the reference line.

V. The following minimum standards shall apply to the protected shoreland provided that forest management not associated with shoreland development nor land conversion and conducted in compliance with RSA 227-J:9, forestry involving water supply reservoir watershed management, or agriculture conducted in accordance with best management practices, shall be exempted from the provisions of this chapter:

(a) Natural woodland buffer.

(1) Where existing, a natural woodland buffer shall be maintained within 150 feet of the reference line. The purpose of this buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrients and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural condition of the protected shoreland.

(2) Within the natural woodland buffer of the protected shoreland under conditions defined in RSA 483-B:9, V, all of the following prohibitions and limitations shall apply:

(A) Not more than a maximum of 50 percent of the basal area of trees, and a maximum of 50 percent of the total number of saplings shall be removed for any purpose in a 20-year period. A healthy, well-distributed stand of trees, saplings, shrubs and ground covers and their living, undamaged root systems shall be left in place.

(B) Any person applying to the department for a septic system construction approval or alteration of terrain permit pursuant to RSA 485-A, or an excavating and dredging permit pursuant to RSA 482-A, within the protected shoreland shall include photographic documentation of the natural woodland buffer.

9

The Comprehensive Shoreland Protection Act
RSA 483-B

(C) Structures, as defined in RSA 483-B:4, XXII, within the natural woodland buffer shall be afforded an opening for building construction, that shall be excluded when computing the percentage limitations under subparagraph (a)(2)(A).

(D) Dead, diseased, unsafe, or fallen trees, saplings, shrubs, or ground covers may be removed. Their removal shall not be used in computing the percentage limitations under subparagraph (a)(2)(A).

(E) Stumps and their root systems which are located within 50 feet of the reference line shall be left intact in the ground, unless removal is specifically approved by the department, pursuant to RSA 482-A.

(F) Preservation of dead and living trees that provide dens and nesting places for wildlife is encouraged.

(G) Planting efforts that are beneficial to wildlife are encouraged.

(b) Septic Systems.

(1) All new lots, including those in excess of 5 acres, created within the protected shoreland are subject to subdivision approval by the department of environmental services under RSA 485-A:29.

(2) The following conditions, based on the characteristics of the receiving soil as they relate to U.S. Department of Agriculture, Natural Resources Conservation Service drainage classes, shall dictate the setback requirements for all new leaching portions of new septic systems, as follows:

(A) Adjacent to ponds, lakes, estuaries and the open oceans.

(i) Where the receiving soil downgradient of the leaching portions of a septic system is a porous sand and gravel material with a percolation rate equal to or faster than 2 minutes per inch, the setback shall be at least 125 feet from the reference line;

(ii) For soils with restrictive layers within 18 inches of the natural soil surface, the setback shall be at least 100 feet from the reference line; and

(iii) For all other soil conditions, the setback shall be at least 75 feet from the reference line.

(B) Adjacent to rivers the setback shall be no less than 75 feet.

(3) The placement of all septic tanks and leaching portions of septic systems for replacement systems shall comply with the requirements of subparagraph (b)(2), to the maximum extent feasible.

(c) Erosion and siltation

(1) All new structures, modification to existing structures, and excavation or earth moving within protected shoreland shall be designed and constructed in accordance with rules

9

The Comprehensive Shoreland Protection Act
RSA 483-B

adopted by the department under 541-A, relative to terrain alteration under RSA 485-A:17, to manage stormwater and control erosion and sediment, during and after construction.

(2) New structures and all modifications to existing structures within the protected shoreland shall be designed and constructed to prevent the release of surface runoff across exposed mineral soils.

(3) A permit pursuant to RSA 485-A:17, I shall be required for improved, developed, or subdivided land whenever there is a contiguous disturbed area exceeding 50,000 square feet that is either partially or wholly within protected shoreland.

(d) Minimum lots and residential development in the protected shoreland:

(1) The minimum size for new lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as established by the department of environmental services under RSA485-A and rules adopted to implement it.

(2) For projects in areas dependent upon on-site sewage and septic systems, the total number of residential units in the protected shoreland, whether built on individual lots or grouped as cluster or condominium development, shall not exceed:

(A) One unit per 150 feet of shoreland frontage; or

(B) For any lot that does not have direct frontage, one unit per 150 feet of lot width as measured parallel to the shoreland frontage that lies between the lot and the reference line.

(3) No lot dependent upon an on-site septic system, having frontage on public waters, shall be created with less than 150 feet of shoreland frontage.

(4) Lots in areas serviced by municipal sewers shall conform to municipal minimum lot standards, and shall not be subject to any shoreland frontage requirement, except as provided by municipal standards.

(5) Lots and residential units outside of the protected shoreland shall not be subject to this chapter.

(e) Minimum lots and non-residential development In the protected shoreland:

(1) The minimum size for new non-residential lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as set forth under rules adopted pursuant to RSA 541-A.

(2) Non-residential development requiring on-site water, sewage and septic systems shall not be constructed on lots less than 150 feet in width.

(3) Non-residential lots in areas serviced by municipal sewers shall conform to municipal minimum lot standards.

9

The Comprehensive Shoreland Protection Act
RSA 483-B

(4) Non-residential lots outside of the protected shoreland shall not be subject to this chapter.

(f) Common owners and residential or non-residential development. In the protected shoreland, waterfront parcels held in common by one or more owners of contiguous interior parcels may be developed but only in a manner consistent with the provisions of this chapter. Care shall be taken for the adequate provision of parking, toilet facilities, and related support systems to minimize the project's impact on the public waters.

(g) The commissioner shall have the authority to grant variances from the minimum standards of this section. Such authority shall be exercised subject to the criteria which govern the grant of a variance by a zoning board of adjustment under RSA 674:33, I(b).

Source. 1991, 303:1. 1992, 235:12-18, 28, I. 1994, 383:7-14. 1995, 32:1, eff. April 24, 1995; 206:2, eff. Aug. 11, 1995; 299:16, eff. Jan. 1, 1996. 1996, 17:4, 5, eff. June 14, 1996; 100:1, eff. May 15, 1996; 228:66, 108, eff. July 1, 1996; 251:22, eff. Aug. 9, 1996; 296:52, 53, eff. Aug. 9, 1996.

483-B:10 Nonconforming Lots of Record:

Nonconforming, undeveloped lots of record that are located within the protected shoreland shall comply with the following restrictions, in addition to any local requirements:

I. Except when otherwise prohibited by law, present and successive owners of an individual undeveloped lot may construct a single family residential dwelling on it, notwithstanding the provisions of this chapter. Conditions may be imposed which, in the opinion of the commissioner, more nearly meet the intent of this chapter, while still accommodating the applicant's rights.

II. Building on nonconforming lots of record shall be limited to single family residential structures and related facilities, including, but not limited to, docks, piers, boathouses, boat loading ramps, walkways, and other water dependent structures, consistent with state law.

Source. 1991, 303:1. 1992, 235:19. 1994, 383:15, eff. July 1, 1994.

483-B:11 Nonconforming Structures:

I. Except as otherwise prohibited by law, nonconforming structures, erected prior to July 1, 1994, located within the protected shoreland may be repaired, renovated, or replaced in kind using modern technologies, provided the result is a functionally equivalent use. Such repair or replacement may alter the interior design or existing foundation, but no expansion of the existing footprint or outside dimensions shall be permitted. An expansion that increases the sewerage load to an on-site septic system, or changes or expands the use of a septic system or converts a structure to condominiums or any other project identified under RSA 485-A:29-44 and rules adopted to implement it shall require approval by the department. Between the primary building line and the reference line, no alteration shall extend the structure closer to the public water, except that the addition of a deck or porch is permitted up to a maximum of 12 feet towards the reference line.

9

The Comprehensive Shoreland Protection Act
RSA 483-B

II. When reviewing requests for the redevelopment of sites that contain nonconforming structures erected prior to July 1, 1994, the commissioner shall review proposals which are more nearly conforming than the existing structures, and may waive some of the standards specified in RSA 483-B:9, so long as there is at least the same degree of protection provided to the public waters. For the purposes of this section, a proposal that is "more nearly conforming" means a proposal for significant changes to the location or size of existing structures that bring the structures to greater conformity, or a proposal for changes to other aspects of the property, including but not limited to stormwater management, wastewater treatment or traffic volume or flow, or both types of proposal which significantly improve wildlife habitat or resource protection.

Source. 1991, 303:1. 1992, 235:20. 1994, 383:16, 17, eff. July 1, 1994. 1996, 17:6,
eff. June 14, 1996.

483-B:12 Shoreland Exemptions:

I. The governing body of a municipality may, in its discretion, request the commissioner to exempt all or a portion of the protected shoreland within its boundaries from the provisions of this chapter if the governing body finds that special local urbanization conditions exist in the protected shoreland for which the exemption is sought.

II. If the governing body of a municipality requests such an exemption, it shall submit evidence of existing and historical patterns of building and development in the protected shoreland. Such evidence shall address:

- (a) Current and past building density.
- (b) Commercial or industrial uses.
- (c) Municipal or other public utilities.
- (d) Current municipal land use regulations which affect the protected shoreland.
- (e) Any other information which the commissioner may reasonably require.

III. With the advice of the office of state planning, the commissioner shall approve or deny the request for an exemption and shall issue written findings in support of his decision. A request for an exemption shall be approved only if the municipality demonstrates, using the evidence required under paragraph II, that special conditions of urbanization exist along the portion of shoreland to be exempted.

IV. The state port authority may request an exemption under this section for all or a portion of any land purchased, leased, or otherwise acquired by it pursuant to RSA 271-A.

Source. 1991, 303:1.

483-B:13 Public Hearing and Notice to Abutter:

[Repealed 1992, 235:28, II, eff. Jan. 1, 1993.]

483-B:14 Rehearings and Appeals:

9

The Comprehensive Shoreland Protection Act
RSA 483-B

Where the requirements of this chapter amend the existing statutory authority of the department or other agencies relative to certain established regulatory programs and shall be enforced under these established regulatory programs, the existing procedures governing contested cases and hearings and appeals regarding these requirements shall apply. Where requirements of this chapter are new and do not amend existing statutory authority relative to any established regulatory programs, the procedures set forth in RSA 541-A:31 for contested cases shall apply.

Source. 1991, 303:1. 1992, 235:24. 1994, 412:51, eff. Aug. 9, 1994.

483-B:15 Gifts, Grants and Donations:

The department is authorized to solicit, receive, and expend any gifts, grants, or donations made for the purposes of this chapter. Gifts of land or easements shall be assigned to the department of resources and economic development for management or assignment to another state agency or other public body, as appropriate.

Source. 1991, 303:1, eff. July, 1994.

483-B:16 Assistance to Municipalities; Office of State Planning:

The office of state planning may assist municipalities with the implementation of local ordinances under this chapter, upon the request of an individual municipality.

Source. 1991, 303:1, effective July 1, 1994.

483-B:17 Rulemaking:

The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

I. The content and structure of all forms, applications and permits to be received or issued by the department under this chapter, including information and other materials to be submitted by an applicant.

II. Procedures for filing and review of requests for urbanized shoreland exemptions and standards for granting urbanized shoreland exemptions, including time frames for decisions.

III. Enforcement of the minimum shoreland standards, including methods and timing of inspection and coordination with municipalities.

IV. Procedures and criteria for the placement of small accessory structures such as storage sheds and gazebos, the size, placement, and construction of which is consistent with the intent of this chapter, between the reference line and the primary building line.

V. Criteria governing the assessment of administrative fines.

VI. Criteria governing low phosphate, slow release nitrogen fertilizer.

VII. Criteria governing maintaining a healthy, well-distributed stand of trees, saplings, shrubs and ground covers.

VIII. A methodology for identifying unsafe trees.

9

The Comprehensive Shoreland Protection Act
RSA 483-B

IX. Defining the opening for building construction.

X. Definitions of terms not defined in this chapter.

Source. 1991, 303:1. 1992, 235:25. 1994, 383:18, eff. July 1, 1994. 1996, 100:2, eff. May 15, 1996.

483-B:18 Penalties:

I. The following shall constitute a violation of this chapter:

- (a) Failure to comply with the provisions of this chapter.
- (b) Failure to obey an order of the commissioner or a municipality issued relative to activities regulated or prohibited by this chapter.
- (c) Misrepresentation by any person of a material fact made in connection with any activity regulated or prohibited by this chapter.

II. Any person who violates this chapter and any person who purchases land affected by a violation of this chapter who knew or had reason to know of the violation shall be liable for remediation or restoration of the land affected.

III. Persons violating the provisions of this chapter shall be subject to the following:

- (a) Upon petition of the attorney general or of the municipality in which the violation occurred, the superior court may levy upon any person violating this chapter a civil penalty in an amount not to exceed \$20,000 for each day of each continuing violation. The superior court shall have jurisdiction to restrain a continuing violation of this chapter, and to require remediation.
- (b) Any person who knowingly violates any provision of this chapter, or any rule adopted or order issued under this chapter or any condition of any permit issued under this chapter shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person, and, notwithstanding RSA 651:2, may in addition to any sentence of imprisonment, probation or conditional discharge, be fined not more than \$20,000 for each violation if found guilty pursuant to this section. Each day of violation shall constitute a separate offense.
- (c) The commissioner, after notice and hearing pursuant to RSA 541-A, shall impose an administrative fine of up to \$5,000 for each offense upon any person who violates this chapter. Rehearings and appeals relating to such fines shall be governed by RSA 541. Imposition of an administrative fine under this section shall not preclude the imposition of further civil or criminal penalties under this chapter.
- (d) Notwithstanding of the \$5000 fine limit in subparagraph (c), the administrative fine for each repeat violation of this chapter may be multiplied by a factor of 2 for every previous violation committed by the person or entity.

Source. 1991, 303:1. 1994, 383:19, eff. July 1, 1994.

483-B:19 Applicability:

9

The Comprehensive Shoreland Protection Act
RSA 483-B

I. Subject to paragraph II, the provisions of this chapter shall not apply to any applicant whose land is in a municipality that has adopted a shoreland protection ordinance under RSA 674:16, the provisions of which are at least as stringent as similar provisions in this chapter. The director of the office of state planning shall certify to the commissioner that the provisions of a local ordinance are at least as stringent as similar provisions in this chapter.

II. If a municipality has a local ordinance that does not contain a counterpart to all of the provisions of this chapter, the more stringent measure shall apply.

Source. 1991, 303:1. 1992, 235:26. 1994, 383:20, eff. July 1, 1994.

483-B:20 Designated Rivers:

The provisions of this chapter shall not apply to rivers or river segments designated by the general court and approved for management and protection under RSA 483 prior to January 1, 1993 with the exception of the Connecticut River.

Source. 1994, 383:21, eff. July 1, 1994.

Shoreland Protection Administrative Rules

Env-Ws 1400

Table of Contents

CHAPTER Env-Ws 1400 SHORELAND PROTECTION	18
Part Env-ws 1401 Purpose And Applicability	18
Part Env-ws 1402 Definitions	18
Part Env-ws 1403 Enforcement Of The Natural Woodland Buffer	18
Part Env-ws 1404 Erosion And Sedimentation	20
Part Env-ws 1405 Placement And Size Of accessory Structures	20
Part Env-ws 1406 Nonconforming Structures	20
Part Env-ws 1407 Variance From The Minimum Standards	21
Part Env-ws 1408 Urbanized Shoreland Exemption	21
Part Env-ws 1409 Shoreland Protection Certification	22
Administrative Rule Changes to Part Env-Ws 1002:	23
Administrative Rule Changes to Part Env-Ws 1003.04:	24
Administrative Rule Changes to Part Env-Ws 1003.05:	24
chapter Env-c 611 Fines Relating To Development Within The Protected Shoreland	24

9

Shoreland Protection Administrative Rules
Part Env-Ws 1400

CHAPTER Env-Ws 1400 SHORELAND PROTECTION

Statutory Authority: RSA 483-B:17

Part Env-ws 1401 Purpose And Applicability

Env-Ws 1401.01 Purpose. The purpose of these rules is to implement RSA 483-B, the comprehensive shoreland protection act.

Env-Ws 1401.02 Applicability. These rules shall apply to all land areas subject to RSA 483-B, namely, all land areas:

(a) Within 250 feet, horizontal distance, of the natural mean high water level of natural fresh water bodies without artificial impoundments listed in the official list of public waters published by the department;

(b) Within 250 feet, horizontal distance, of the water line at full pond as determined by the elevation of the top of the impoundment structure of artificially impounded fresh water bodies listed in the official list of public waters;

(c) Within 250 feet, horizontal distance, of the highest observable tide line of coastal waters; and

(d) Within 250 feet, horizontal distance, of the ordinary high water mark of rivers, meaning all year-round flowing waters of fourth order or higher, as shown on the current version of the U.S. Geological Survey topographic maps as defined in RSA 483-B:4, XVI (c), excluding those land areas exempted by RSA 483-B:20.

Part Env-ws 1402 Definitions

Env-Ws 1402.01 Statutory Definitions. Any term used in these rules shall have the same meaning as in RSA 483-B:4.

Env-Ws 1402.02 Additional Definitions. In addition to the statutory definitions, the following definitions shall apply:

(a) "Fertilizer" means any substance containing one or more recognized plant nutrient(s) which is used primarily for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth.

(b) "Non-conforming lot" means a lot that does not meet current state or local subdivision, zoning, or other lot size or setback requirements.

Part Env-ws 1403 Enforcement Of The Natural Woodland Buffer

Env-Ws 1403.01 Well-Distributed Stand. If ordered by the department to restore a well-distributed stand of trees, saplings, shrubs and ground cover, the violator shall submit a restoration plan for approval that describes:

9

Shoreland Protection Administrative Rules
Part Env-Ws 1400

- (a) The species of plants proposed for replanting;
- (b) The number of plants proposed for replanting;
- (c) The basal area of the trees proposed for replanting;
- (d) The existing trees within the natural woodland buffer; and
- (e) The existing and proposed structures, including but not limited to the primary building, accessory structures, and water-dependent structures.

Env-Ws 1403.02 Plan Approval. The department shall approve plans that meet the following criteria:

- (a) Replacement plantings shall meet one of the following:
 - (1) Replacement plants shall consist of the species that are as close as possible to the species present prior to vegetation removal; or
 - (2) At least 75 percent of the replacement plants shall be chosen from the natural woodland buffer plantings list included as appendix D.
- (b) Replacement plants shall have spatial and compositional diversity that replicates a natural woodland buffer.
- (c) Replacement and remaining trees shall comprise at least 50 percent of the basal area that existed prior to cutting.
- (d) Replacement trees shall be placed no further apart than 10 feet on center.
- (e) There shall be no changes to surface drainage unless a sediment and erosion control plan is submitted and approved. The sediment and erosion control plan shall be submitted with the restoration plan and shall meet the requirements specified in Env-Ws 415.

Env-Ws 1403.03 Opening for Building Construction.

- (a) Subject to (b) below, the opening for building construction shall be measured on the horizontal plane as the area extending 25 feet from access roads, driveways and other impervious surfaces, septic systems and all structures except accessory structures.
- (b) Between the primary building line and the reference line, the opening shall be measured on the horizontal plane as the area extending 15 feet from access roads, driveways and other impervious surfaces, septic systems and all structures except accessory structures .
- (c) The opening for construction of an accessory structure shall be measured as the area extending 10 feet outward from the footprint of the accessory structure.
- (d) The property owner shall stake the building(s) footprint(s) in the field.

Env-Ws 1403.04 Trees Outside Building Construction Opening.

- (a) Any tree located outside the opening for building construction shall be counted in the basal

9

Shoreland Protection Administrative Rules
Part Env-Ws 1400

- area percentage limitation calculations, subject to RSA 483-B:9, V(a)(2)(D).
- (b) For purposes of determining compliance with RSA 483-B:9, V(a)(2)(A), only those areas outside the opening for building construction shall be considered.

Part Env-ws 1404 Erosion And Sedimentation

Env-Ws 1404.01 Compliance. Pursuant to RSA 483-B:9, V(c), construction, earth moving or other significant alteration of the characteristics of the terrain within the protected shoreland shall comply with RSA 485-A:17 and Env-Ws 415.

Part Env-ws 1405 Placement And Size Of accessory Structures

Env-Ws 1405.01 Applicability. Requirements of this part shall apply to accessory structures located between the reference line and the primary building line, including but not limited to storage sheds, wells, pump houses and gazebos.

Env-Ws 1405.02 Construction. Accessory structures shall be:

- (a) Constructed only if allowed by local zoning; and
- (b) Constructed in accordance with the local building code.

Env-Ws 1405.03 Status. Accessory structures shall:

- (a) Not exceed 20 feet in height; and
- (b) Have a footprint no larger than 150 square feet.

Env-Ws 1405.04 Setback.

(a) Subject to (b) below, all accessory structures built after the effective date of these rules shall be set back at least 20 feet from the reference line.

(b) The minimum 20-foot setback shall not apply to structures that require direct access to the water as an operational necessity, including but not limited to piers, docks, boathouses, retaining walls, pump houses, wells and other functionally water-dependent structures.

Env-Ws 1405.05 Placement. No accessory structure shall be built on land having greater than 25% slope.

Part Env-ws 1406 Nonconforming Structures

Env-Ws 1406.01 Replacement of Nonconforming Primary Buildings Damaged by Accidental Means. Any nonconforming structure damaged by accidental means shall be rebuilt, repaired or removed within one year of the date of the accident.

Env-Ws 1406.02 Replacement of Nonconforming Primary Buildings Other Than Those Damaged By Accidental Means. The replacement of any nonconforming primary structure shall be at least as far back as the primary building line.

Shoreland Protection Administrative Rules
Part Env-Ws 1400

Env-Ws 1406.03 Decks and Porches of Nonconforming Structures. Decks and porches located between the primary building line and the reference line shall not be converted to become part of the primary living space.

Part Env-ws 1407 Variance From The Minimum Standards

Env-Ws 1407.01 Information required for a variance request. Each applicant for a variance under RSA 483-B:9, V(g) shall provide the following information on a form obtained from the department:

- (a) Name of landowner;
- (b) Mailing address of landowner;
- (c) Location of subject parcel and tax map number;
- (d) Description of the lot with sketch showing surface waters and the reference line;
- (e) A specific reference to the chapter or rules for which a variance is being sought;
- (f) A full explanation of the development for which a variance is sought;
- (g) Pursuant to RSA 483-B:9, V(g), the reason for requesting a variance based on the criteria which govern the grant of a variance by a zoning board of adjustment under RSA 674:33, I(b); and
- (h) Evidence that the criteria specified in (g) above have been met. Env-Ws 1407.03 Local Notification. Each applicant for a variance shall submit a copy of the information required by Env-Ws 1407.02 to the local governing body, at the time of submittal to the department.

Env-Ws 1407.04 Findings. The department shall approve a request for variance upon finding that the proposal is adequate to ensure that the intent of RSA 483-B is met and that the criteria for granting a variance under RSA 674:33 have been met.

Env-Ws 1407.05 Reason for Denial. No variance shall be granted which, in the judgement of the department, contravenes the intent of RSA 483-B or any rule.

Part Env-ws 1408 Urbanized Shoreland Exemption

Env-Ws 1408.01 Exemption. Pursuant to RSA 483-B:12(I), the governing body of a municipality may, in its discretion, request the commissioner to exempt all or a portion of the protected shoreland within its boundaries from the provisions of this chapter if the governing body finds that special local urbanization conditions exist in the protected shoreland for which the exemption is sought.

Env-Ws 1408.02 Evidence.

- (a) Pursuant to RSA 483-B:12(II), the municipality shall present evidence of existing and historical patterns of building and development in the protected shoreland, which shall address

9

Shoreland Protection Administrative Rules
Part Env-Ws 1400

the following:

- (1) Current and past building density;
 - (2) Current commercial or industrial uses;
 - (3) Municipal or other public utilities; and
 - (4) Current municipal land use regulations which affect the protected shoreland.
- (b) The municipality shall also provide:
- (1) The number of structures in sight from the waterbody;
 - (2) Density allowed under current local zoning ordinances;
 - (3) Extent of non-residential land use currently existing; and
 - (4) If available, a recent aerial photograph of the area.

Env-Ws 1408.03 Delivery. The applicant shall send the evidence directly to the office of state planning with a copy to the commissioner.

Env Ws 1408.04 Time Frames for Decisions.

- (a) Provided the office of state planning notifies the applicant in writing of the reasons for the extension, the office of state planning may take up to an additional 30 working days to perform the review.
- (c) The commissioner shall approve the request if the evidence required in Env-Ws 1408 shows that the municipality has existing and historical patterns of building and development in the protected shoreland.
- (d) The commissioner shall issue findings in support of the decision within 30 working days from receipt of the recommendation.

Part Env-ws 1409 Shoreland Protection Certification

Env-Ws 1409.01 Other Department Permits.

- (a) Pursuant to RSA 483-B:6, any person applying for any of the following permits shall submit the certification application as specified in (b):
 - (1) Wetlands permit pursuant to RSA 482-A.
 - (2) Individual sewage disposal system pursuant to RSA 485-A:29.
 - (3) Subdivision permit pursuant to RSA 485-A:29.
 - (4) Alteration of terrain permit pursuant to RSA 485-A:17.
- (b) Applicants for any permit listed in (a) above shall, at the time of filing the permit application, also provide the following information on a form obtained from the department:

9

Shoreland Protection Administrative Rules
Part Env-Ws 1400

- (1) Name of agent or applicant;
 - (2) Town in which the project is proposed;
 - (3) The tax map, block, and lot number;
 - (4) Subdivision name; and
 - (5) The answers to the following questions:
 - A. "Will the project for which a permit is hereby requested involve construction, land clearing, or other development within the protected shoreland as defined by RSA 483-B: 4, XV? Answer yes or no.";
 - B. "If the project involves construction, land clearing, or other development within the protected shoreland, will it meet or exceed the development standards of RSA 483-B? Answer yes or not applicable."; and
 - (6) "If the answer to b. above is "not applicable", state why."
- (c) The applicant shall agree to and sign the following: "As owner or agent for the owner of the subject property, by my signature below I certify that: My responses to questions above are correct to the best of my knowledge. I am familiar with the requirements of RSA 483-B and have knowledge of the development activities which will be undertaken. The plans and other information submitted with this permit application provide a complete description of the project and demonstrate how compliance will be accomplished. I understand that false information given in this certification may result in revocation of any permit granted by the department of environmental services as a result of this application. I also understand that RSA 483-B:18 provides that violations subject the responsible party to remediation or restoration of the land affected, fines up to \$20,000 for each day of continuing violation, imprisonment and other penalties."

Administrative Rule Changes to Part Env-Ws 1002:

Env-Ws 1002.28 "Natural woodland buffer" means "natural woodland buffer" as defined by RSA 483-B:4, XI.

Env-Ws 1002.31 "Primary building line" means "primary building line" as defined in RSA 483-B:9, II(b).

Env-Ws 1002.32 "Protected shoreland" means "protected shoreland" as defined by RSA 483-B: 4, XV.

Env-Ws 1002.35 "Reference line" means "reference line" as defined by RSA 483-B:4, XVII.

Env-Ws 1002.36 "Restrictive layer" means a soil horizon that restricts the downward flow of water and is uncharacteristic of the soil layers above and below, such as a layer of soil with a consistence of firm or very firm, cemented horizons, or stratified layers of silt, loam or clay within the soil profile.

9

**Shoreland Protection Administrative Rules
Part Env-Ws 1400**

Env-Ws 1002.39 "Shoreland frontage" means the average of the distances of the actual natural shoreline footage and a straight line drawn between property lines.

Administrative Rule Changes to Part Env-Ws 1003.04:

- (r) If the lot is within the protected shoreland, the following additional information :
- (1) Length of shoreland frontage, if the development is residential;
 - (2) Lot width, if the development is commercial; and
 - (3) The topography of an area equal to or greater than the lot size determined by Env-Ws 1005.02 for each lot.

Administrative Rule Changes to Part Env-Ws 1003.05:

- (ae) If the lot is within the protected shoreland the following additional information :
- (1) The reference line;
 - (2) The primary building line;
 - (3) Distance and location of nearest surface waters in relation to disposal system unless the nearest surface waters is greater than 125 feet away; and
 - (4) A designation on the plan of the limits of the natural woodland buffer.

Chapter Env-c 611 Fines Relating To Development Within The Protected Shoreland

Statutory Authority: RSA 483-B:17

Env-C 611.01 Definitions.

Any term used in these rules shall have the same meaning as in the law or rule to which the fine relates.

Env-C 611.02 Water Quality Violations.

Determination of a water quality violation shall be done in accordance with Env-Ws 430.

Env-C 611.03 Fines Relating to Salt Storage Yards, Auto Junk Yards and Solid or Hazardous Waste facilities.

For violations relating to RSA 483-B:9 regarding salt storage yards, auto junk yards, and solid or hazardous waste facilities, the fine shall be \$2,000 if not resulting in water quality violations and \$2,500 if resulting in water quality violations.

Env-C 611.04 Fines Relating to Construction of Primary Structures.

- (a) For violations relating to construction of a primary structure between the reference line and the primary building line, the fine shall be \$3,000.

9

Shoreland Protection Administrative Rules
Part Env-Ws 1400

(b) For violations relating to construction of an addition that extends the structure closer to the public waters, except the addition of an open deck or porch up to a maximum of 12 feet towards the reference line pursuant to RSA 483-B:11, II, the fine shall be \$2000.

(c) For violations relating to the enclosure of an open deck or porch, located between the reference line and the primary building line, the fine shall be \$2000.

Env-C 611.05 Fines Relating to Fertilizer Use Within the Protected Shoreland.

For use of fertilizers not in accordance with RSA 483-B, the fine shall be \$500 if not resulting in water quality violations and \$1000 if resulting in water quality violations.

Env-C 611.06 Fines Relating to the Natural Woodland Buffer.

(a) For building construction of an accessory structure in the natural woodland buffer zone not in accordance with Env-Ws 1400, the fine shall be \$2,000.

(b) For each stump removed within 50 feet of the reference line, the fine shall be \$1,000 if not resulting in water quality violations and \$1,500 if resulting in water quality violations.

(c) For failure to maintain a well-distributed stand within the 150 foot natural woodland buffer zone the fine shall be \$4,000 if not resulting in water quality violations and \$4,500 if resulting in water quality violations.

(d) For failure to maintain a 50% basal area within the 150 foot natural woodland buffer zone the fine shall be \$4,000 if not resulting in water quality violations and \$4,500 if resulting in water quality violations.

Env-C 611.07 Fines Relating to Failure to Comply With An Order.

For failing to comply with a department order, the fine shall be \$2,000.

Env-C 611.08 Failure to Pay Fines.

For failure to pay a fine imposed in accordance with these rules, the fine shall be 10% of the amount of the originally-imposed fine per month or portion thereof for any part of an unpaid fine. Fines for failure to pay a fine shall be imposed in accordance with these rules.

Env-C 603.02 Fines Relating to Alteration of Terrain.

For violations relating to RSA 485-A:17, Env-Ws 415, RSA 483-B, and Env-Ws 1400 regarding alteration of terrain, the amount of the administrative fine shall be as follows:

(g) For construction, earth moving or other activities resulting in the significant alteration of 50,000 sq. ft. or greater of the terrain within the protected shoreland without a permit:

(1) \$3,000 if the activities have not caused a water quality violation; and

(2) \$3,500 if the activities have caused a water quality violation;

(h) For construction, earth moving or other activities within the protected shoreland for which

9

Shoreland Protection Administrative Rules
Part Env-Ws 1400

a permit has been obtained but which is not in conformance with the conditions of the permit:

- (1) \$2,000 if the activities have not caused a water quality violation; and
- (2) \$2,500 if the activities have caused a water quality violation;
- (i) Failure to design and construct new structures to prevent erosion of exposed soils:
 - (1) \$1,000 if the activities have not caused a water quality violation; and
 - (2) \$1,500 if the activities have caused a water quality violation.

Env-C 604.01 Fines Relating to Subdivisions.

For violations of RSA 485-A [and], Env-Ws 1000, RSA 483-B, and Env-Ws 1400 relating to subdivisions, the amount of the administrative fine shall be as follows:

- (e) For commencing road construction on, clearing vegetation from, placing fill on or otherwise altering a parcel of land within the protected shoreland for which plans are required to be submitted pursuant to RSA 483-B:9 prior to obtaining approval of the subdivision plan, \$2,000.

Env-C 604.02 Fines Relating to Septic Systems.

For violations of RSA 485-A, Env-Ws 1000, RSA 483-B:9, and Env-Ws 1400 relating to septic systems, the amount of the administrative fine shall be as follows:

- (r) For failure to meet the required setback requirements for all new leaching portions of new septic systems, \$2,000.

Index

A

Abutter
Defined 3
Accessory structure 9, 14, 19, 20
Defined 3
Fines 25
Footprint 20
Height 20
Opening 19
Setback 20
Slope 20
Water Dependant 20
Agriculture 3, 8, 9
Alteration of nonconforming structures 12
Alteration of Terrain 7, 11
Certification 22
Fines 25
Appeals 13-16, 15
Applicability 15-16
Applications 14
Aquatic life 2
Archaeological and historical resources 2
Artificial impoundments 5, 18
Reference Line Defined 5
Automobile junk yards 8
Fines 24

B

Bank alteration 7
Basal area 9, 19
Defined 3
Fines 25
Beach replenishment 7
Birds, Habitat 2
Breakwaters 8

C

Cease and desist orders 8
Chemical pollution 9
Civil penalties 15
Cluster subdivision 11
Coastal waters 18
Defined 5
Reference Line Defined 5
Coastal wetlands 2
Commercial fishing 2

Commissioner
Defined 4
Common ownership 12
Conditions 7
Condominium development 11
Conflict with other local or state laws 3
Connecticut River 16
Consistency 3-16
Construction 11
Fines 24, 25, 26
Conversion 21
Court, superior 15

D

Dam Safety 9
Dead trees 10
Decks 12, 21
Fines 25
Definitions 3-16, 18, 23
Department
Defined 4
Designated Rivers 16
Development outside the protected shoreland 8
Diseased trees 10
Disturbed area
Defined 4
Docks 8
Donations 14
Drainage structures 9

E

Earth excavation 7
Economic development 3
Enforcement 6-16, 14
By Commissioner 6
Woodland buffer 6
Erosion 2, 9, 10, 19, 20
Fines 26
Exemptions 13-16
Expansion of nonconforming structures
Fines 25

F

Fallen trees 10
Felony 15
Fertilizer 8, 14
Defined 18
Fines 25
Fines 14, 24
Administrative 15

9

Index

- Failure to pay 25
- Fish habitat 9
- Fish spawning grounds 2
- Flooding 2
- Forest management 9
- Forms 14
- Fourth order or higher streams 5, 10, 18
 - Defined 5
 - Reference Line Defined 5
- Fresh water 4

G

- General Court 2
- Gifts 14
- Grants 14
- Grass 8
- Great Bay Estuary 5
- Great ponds 5
- Ground cover 9, 18
 - Defined 4

H

- Hazardous waste facilities 8
 - Fines 24
- Healthy well-distributed stand 9, 18
 - Fines 25
- Hydro electric facilities 9

I

- Individual building lots 11
- Inspection authority 6

J

- Joint code enforcement 8
- Jurisdiction 15

L

- Land use control ordinances 7
- Lawns 8
- Limestone 8
- Local Authority
 - Approvals 7
 - Building code 20
 - Coordination 6
 - Enforcement 6
 - Ordinances 14, 16
 - Participation 7-16
 - Permits 3
 - Urbanization 13

- Lot of record
 - Defined 4
- Lot width 24

M

- Minimum lot size 11-12
- Minimum standards 2-16, 8-16
- Misdemeanor 15
- Misrepresentation 15
- Monitoring wells 9
- Municipalities, Assistance to 14
- Municipality 13
 - Defined 4
- Municipal authority 7-16
- Municipal sewers 11

N

- Native or naturalized species 19
- Natural beauty 3
- Natural fresh water bodies 18
 - Reference Line Defined 5
- Natural Resources Conservation Service 10
- Natural woodland buffer 9-12, 18
 - Defined 4, 23
 - Fines 25
- Nitrogen fertilizer 8
- Non-residential development 11
- Nonconforming Lots of Record 12-16
 - Defined 18
- Nonconforming Structures 20
 - Accidental damage 20
 - Demolition 20
 - Replacement of 20
- Nonconforming structures 12-16
 - Expansion 12
 - Renovation 12
 - Repair 12
 - Defined 5
 - Replace in kind 12
 - Defined 5
- Nutrients 9

O

- Office of State Planning 14, 16
- On-site inspections 7-16
- Opening for building construction 10, 19
- Order 7, 15
 - Failure to comply 25
- Ordinary high water mark
 - Defined 4

F-O

Index

P

Patios 12, 21
 Fines 25
 Penalties 15-16
 Penalties, criminal 15
 Permits 7-16
 Person
 Defined 4
 Piers 8
 Pipes 8
 Plan Approval 19
 Porches 12, 21
 Fines 25
 Port authority 13
 Primary building line 8, 19
 Defined 4, 23
 Primary structures 8, 19
 Defined 4
 Fines 24
 Prior approval 7-16
 Private water supply facilities 8
 Protected shoreland 9
 Defined 4, 23
 Public health, safety, and the general welfare 2
 Public interest 2
 Public utility lines 9
 Public waters 2
 Defined 4
 Public water supply facilities 8
 Pump houses 20
 Pump stations 8
 Purpose 2, 18

R

Redevelopment 13
 Reference line 10
 Defined 5, 23
 Remediation 15, 19
 Removal or removed
 Defined 5
 Repeat violation
 Defined 5
 Replacement plantings 19
 Replacement septic systems 10
 Replacement system defined 5
 Replanting 19
 Residential units 11
 Defined 6
 Restrictive layers 10
 Defined 23

Root systems 9, 10
 Rulemaking 14-16
 Rules 18
 Rule changes 23, 24
 Runoff 11

S

Salt storage 8
 Fines 24
 Sapling 9, 18
 Defined 6
 Scenic beauty 3
 Scientific study 3
 Sediment 19
 Septic systems 7, 10-12, 12
 Fines 26
 Setback 10
 Tanks 10
 Sewage treatment facilities 8
 Shoreland frontage 11, 24
 Defined 6, 24
 Shoreland Protection Certification 22
 Shrub 18
 Defined 6
 Solid waste facilities 8, 9
 Fines 24
 Species 19
 State agencies 3
 Statutory Authority 18
 Storage sheds 20
 Strahler method 5
 Structures 10
 Defined 6
 Fines 24
 Stumps 10
 Fines 25
 Subdivision 7, 10, 11
 Certification 22
 Defined 6
 Fines 26
 Subsurface Systems Bureau 7, 10
 Certification 22

T

Tidal rivers 5
 Topography 24
 Tree 9, 18
 Defined 6
 Tree canopy 9
 Turbidity 9

9

U-Z

Index

U

Understory 9
Unsafe trees 10
Urbanization
 Defined 6
Urbanized shoreland exemptions 14, 21
 Delivery 22
 Evidence 21
 Time frames for decisions 22

V

Variances 12, 21
 Approval 21
 Denial 21
 Findings 21
 Local notification 21
Violation 15, 18

W

Waste permit 9
Waterfront parcels 12
Waters of the state 8
Water dependent structures 7, 8, 12, 19, 20
 Defined 6
Water pollution 2
Water quality violations
 Fines 24
Water supply intakes 8
Water supply reservoir watershed management 9
Water temperatures 9
Water treatment facilities 8
Wells 20
Wetlands Bureau 7, 8
 Permit Certification 22
Wharf 8
Wildlife habitat 3, 9, 10
Wildlife habitats 2

Z

Zoning board of adjustment 12, 21

Shoreland Protection
Environmental
Fact Sheet

SP-6

1997

Minimum Shoreland Protection Standards, RSA 483-B

LIMITS WITHIN THE PROTECTED SHORELAND

250 ft

Prohibited Uses (RSA 483-B:9, II)

- Establishment/expansion of salt storage yards, auto junk yards, solid waste & hazardous waste facilities.
- Use low phosphate, slow release nitrogen fertilizer from 250 feet to 25 feet.

Uses Requiring State Permits

- Public water supply facilities (RSA 483-B:9, III)
- Public water & sewage treatment facilities (RSA 483-B:9, IV)
- Public utility lines (RSA 483-B:9, IV-b)
- Existing solid waste facilities (RSA 483-B:9, IV-c)
- All activities regulated by the DES Wetlands Bureau per RSA 482-A (RSA 483-B:9, II(c))

Other Restricted Uses

- All new lots, including those in excess of 5 acres, are subject to subdivision approval by DES. (RSA 483-B:9, V(b)(1))
- Setback requirements for all new septic systems are determined by soil characteristics. (RSA 483-B:9, V(b)(2))
- Minimum lot size in areas dependent on septic systems determined by soil type. (RSA 483-B:9, V(e)(1))
- Alteration of Terrain Permit standards reduced from 100,000 square feet to 50,000 square feet. (RSA 483-B:6, I(d))
- Total number of residential units in areas dependent on on-site sewage & septic systems, not to exceed 1 unit per 150 feet of shoreland frontage. (RSA 483-B:9, V(e)(2))

NATURAL WOODLAND BUFFER RESTRICTIONS (RSA 483-B:9, V(a))

150 ft

- Where existing, a natural woodland buffer must be maintained.
- Tree cutting limited to 50% of the basal area of trees, and 50% of the total number of saplings in a 20 year period. A healthy, well-distributed stand of trees, saplings, shrubs, and ground covers must be maintained.
- Stumps and their root systems must remain intact in the ground within 50 feet of the reference line.
- The opening for building construction is limited to 25 feet outward from the building, septic system, and driveway.
- The opening for accessory structures is limited to 10 feet outward from the footprint.

NEW SEPTIC SYSTEM LEACHFIELD SETBACKS (RSA 483-B:9, V(b)(2))

- 125 feet where soil down gradient of leachfield is porous sand & gravel.
- 100 feet where soil maps indicate presence of soils with restrictive layers within 18 inches of natural soil surface.
- 75 feet where soil map indicates presence of all other soil types.
- 75 feet minimum setback from rivers.

125 ft
100 ft
75 ft

PRIMARY BUILDING LINE*

- Primary structure setback 50 feet from the reference line. (RSA 483-B:9, II(B))
- Fertilizer use is prohibited within 25 feet of reference line. (RSA 483-B:9, II(d))
- Accessory structure setback 20 feet from the reference line. (EnvWs 1405.04)

50 ft
25 ft
20 ft